

REGULAR MEETING
RENO CITY COUNCIL
RENO CITY COUNCIL CHAMBER
ONE EAST FIRST STREET
RENO, NV 89501
Wednesday, February 24, 2010
10:00 A.M.

- A.0 *PLEDGE OF ALLEGIANCE
- A.1 *OBSERVANCE OF A MOMENT OF SILENCE
- A.2 *ROLL CALL
- A.3 APPROVAL OF THE AGENDA - February 24, 2010.
- A.4 APPROVAL OF MINUTES - February 10, 2010.
- A.5 *PUBLIC COMMENT - Limited to No More than three (3) Minutes. The public may comment by submitting a Request to Speak form to the City Clerk. Please note that there is no time certain for public comment at this meeting.
- B.0 CASH DISBURSEMENTS - January 31, 2010 through February 13, 2010.
- C.0 CONSENT AGENDA
- C.1 [Approval of Privileged Business Licenses](#)
 - New License - Cabaret
 - a. 775 Gastro Pub, John L. Leniz and Sarah Y. Leniz, 5162 Meadowood Mall Circle.
 - New Licenses - Liquor
 - b. 275 Hill St., Brett Rosselli, 275 Hill Street, Suite 100.
 - c. Old Granite Street Eatery, Ryan C. Gold and Justin C. Owen, 243 South Sierra Street.
 - Change of Ownership – Liquor
 - d. Go Fer Gas, Bankim Amin and Vikram Patel, 4600 North Virginia Street.
 - e. Molly's Swiss Chalet, Erin Lee Maddox, 501 Mill Street.
- C.2 [Staff Report: Approval of Consultant Agreement with Kennedy Jenks Consultants for Facilitation and Technical Assistance for a Coordinated Monitoring Program in an amount not to exceed \\$64,500 \(Nevada Nonpoint Source 319\(h\) grant\).](#)
- C.3 [Staff Report: Acceptance of a grant award to the City of Reno from the Boys and Girls Club of the Truckee Meadows, via the Adopt-A-School Program and related police operations, to reduce child involvement in crime, drug use, gang participation, and violence in the amount of \\$31,400.](#)

- C.4 [Staff Report: Approval of Bid Award to Artistic Fence for Security Fencing at the Reno Police Department Evidence Warehouse in the amount of \\$39,430 \(2009 Recovery Act JAG Grant\).](#)
- C.5 [Staff Report: Approval of an Agreement for use of real property for fire training activities located at 170 Juniper Hill Road, Reno, Nevada.](#)
- C.6 [Staff Report: Approval of an Engagement Letter with Special Counsel, of the University of Pennsylvania Law School for representation before the U.S. Supreme Court in the case of Conn v. City of Reno, No. 07-15572 \(9th Cir. Jan. 8, 2010\), with potential costs not to exceed \\$15,000 \(Risk Management\).](#)
- C.7 [Staff Report: Approval of Memorandum of Understanding among the City of Reno, the City of Sparks and Washoe County regarding the Recovery Zone Facility Bond Program Intergovernmental Subcommittee](#)
- C.8 [Staff Report: Approval of Contract with Nate Topol \(Lakeridge Place\), to extend the period it will voluntarily pay retroactive impact fees adopted by the City of Reno from June 30, 2010, to July 1, 2011, with respect to the Lakeridge Place project, Case No. LDC 08-00225.](#)
- D.0 PROCLAMATIONS:
- D.1 Proclamation honoring Deputy Chief of Police Jim Johns.
- E.0 PRESENTATIONS - None.
- F.0 PUBLIC HEARINGS - 10:15 A.M. - None.
- G.0 ORDINANCES, ADOPTION
- G.1 [Staff Report: Bill No.6699 Ordinance amending the boundaries of the City of Reno, Nevada, Tourism Improvement District No. 2009 \(Freight House\) and providing other matters properly relating thereto.](#)
 - G.1.1 Staff Report: Approval of a Cooperative Agreement between the City of Reno and the State of Nevada, Department of Taxation to perform all functions incident to the administration of any money pledged pursuant to NRS 271A.070 attributable to the City of Reno, Nevada, Tourism Improvement District No. 2009 (Freight House).
- H.0 RESOLUTIONS [Other Resolutions can be found under the Public Hearing Sections of this Agenda]
- H.1 [Staff Report: Resolution No. Resolution in the best interest of the City to lease and Resolution of Intent authorizing certain City owned real property identified as vacant office space located at City Hall, 1 East First Street, to be leased by public auction for a minimum monthly lease amount of \\$1.65 per square foot \(s.f.\) for corner suites and \\$1.50](#)

per s.f. for interior suites in accordance with the provisions of NRS 268.059 - 268.062 and Title 15 of the Reno Municipal Code.

- H.2 Staff Report: Resolution No. Resolution granting approval of \$135,000 to Artown for Festival Sponsorship and Opening Night Sponsorship for FY2010 (PRCS Special Revenue Fund and Room Tax Fund).

This item was continued from the December 16, 2009 and January 27, 2010 City Council meeting.

H.2.1 Approval of an Agreement with Artown for Festival Sponsorship for FY2010.

- H.3 Staff Report: Resolution No. Resolution granting approval of \$10,000 to Sierra Arts Foundation to maintain a Web-Based Arts Calendar (PRCS Special Revenue Fund).

This item was continued from the December 16, 2009 and January 27, 2010 City Council meeting.

H.3.1 Approval of an Agreement with Sierra Arts Foundation for Sponsorship of a FY2010 Web-Based Arts Calendar.

- H.4 Staff Report: Resolution No. Resolution granting approval of \$63,700 to the Pioneer Center for Performing Arts for FY2010 Sponsorship (PRCS Special Revenue Fund and Room Tax Fund).

This item was continued from the December 16, 2009 and January 27, 2010 City Council meeting.

H.4.1 Approval of an Agreement with Pioneer Center for Performing Arts for FY2010.

- I.0 ORDINANCES, INTRODUCTION [Other Ordinance Introductions can be found under the Public Hearing Sections of this Agenda]

- J.0 STANDARD DEPARTMENT ITEMS

- J.1 CITY MANAGER

- J.2 Staff Report: Discussion and potential direction to staff regarding Proposals to Conduct a City-Wide Organizational Study.

- J.3 Staff Report: Discussion, potential appointments and direction to staff regarding the creation of a Stakeholder Group to provide ideas regarding the budget, with potential expenses not to exceed \$25,000 (General Fund).

- J.4 Confirmation of the Appointment of Fire Chief.

- K.0 CITY CLERK

- K.1 Boards and Commissions Appointments - None.

L.0 MAYOR AND COUNCIL

L.1 Identification of Mayor and Council Items for Future Agendas of the Reno City Council.

L.2 Liaison Reports

Access Advisory Board - Councilmember Hascheff, Liaison

Affordable Housing Task Force - Councilmember Sferrazza, Liaison

Artown - Councilmember Aiazzi, Member

Audit Committee - Councilmember Hascheff, Member, Councilmember Gustin, Member,
Councilmember Sferrazza, Member

Ballroom Construction Review Committee - Mayor Cashell, Member, Councilmember Dortch,
Member, Councilmember Aiazzi, Member

Board of Directors, Nevada League of Cities - Councilmember Sferrazza, Member

Citizen's Cable Compliance Committee - Councilmember Aiazzi, Liaison

City of Reno Housing Authority - Councilmember Sferrazza, Member

Civil Service Commission - Councilmember Hascheff, Liaison

Criminal Justice Advisory Committee - Councilmember Sferrazza, Liaison

District Board of Health - Councilmember Gustin, Member

Downtown Police Tax District - Councilmember Gustin, Liaison

Financial Advisory Board - Councilmember Hascheff, Liaison

Fire Advisory Board - Councilmember Hascheff, Alternate, Councilmember Zadra, Member,
Councilmember

Aiazzi, Member

Flood Control Coordinating Committee - Councilmember Gustin, Member, Councilmember
Sferrazza, Member

4 Steps into the Future Advisory Board - Councilmember Sferrazza, Liaison

Historical Resources Commission - Councilmember Gustin, Liaison

Human Services Consortium - Councilmember Sferrazza, Member, Councilmember Aiazzi,
Alternate

National League of Cities Public Safety and Crime Prevention Steering Committee -
Councilmember Sferrazza, Member

Neighborhood Advisory Boards - Councilmember Gustin, Liaison (Ward 1), Councilmember
Zadra, Liaison (Central & South Ward 2), Councilmember Sferrazza, Liaison (Ward 3),
Councilmember Dortch, Liaison (Northeast, & North Valleys Ward 4), Councilmember
Aiazzi, Liaison (Northwest & Old Northwest Ward 5)

Oversight Panel for School Facilities - Councilmember Hascheff, Member,
Councilmember Aiazzi, Member,

Planning and Building Enterprise Funds Advisory Committee - Councilmember Zadra,
Liaison, Councilmember Sferrazza, Liaison

Recreation and Parks Commission - Councilmember Gustin, Liaison

Redevelopment Agency Citizen's Advisory Committee - Councilmember Gustin, Liaison

Regional Transportation Commission - Councilmember Dortch, Member,
Councilmember Aiazzi, Member

Regional Planning Governing Board - Mayor Cashell, Member, Councilmember
 Hascheff, Member, Councilmember Gustin, Alternate, Councilmember Zadra, Alternate,
 Councilmember Dortch, Member, Councilmember Aiazzi, Member
 Reno Arts and Culture Commission - Councilmember Aiazzi, Liaison
 Reno City Planning Commission - Councilmember Dortch, Liaison
 Reno Sparks Convention & Visitors Authority - Councilmember Zadra, Member,
 Councilmember Dortch, Member
 Reno Tahoe Airport Authority - Councilmember Gustin, Liaison, Councilmember Zadra,
 Liaison, Councilmember Dortch, Alternate
 Senior Citizen's Advisory Committee - Councilmember Hascheff, Liaison,
 Councilmember Gustin, Alternate
 Sierra Arts Foundation - Councilmember Zadra, Member
 Truckee Meadows Water Authority - Mayor Cashell, Member, Councilmember Dortch,
 Alternate, Councilmember Aiazzi, Member
 Urban Forestry Commission - Councilmember Gustin, Liaison
 Youth City Council - Councilmember Sferrazza, Liaison

- L.3 Reports from any Conferences or Professional Meetings.
- L.4 Discussion and potential direction to staff regarding an Initiation of an Amendment to Title 18 "Annexation and Land Development" to address concerns regarding stockpiling related to construction sites. J. Sferrazza

M.0 PUBLIC HEARINGS - 6:00 P.M.

N.0 ADJOURNMENT.

STAFF REPORT

To: Mayor and City Council

Agenda Item: C.1

Date: **2-24-2010**

Thru: Donna Dreska, City Manager

C.1

Subject : Approval of Privileged Business Licenses

New License - Cabaret

a. 775 Gastro Pub, John L. Leniz and Sarah Y. Leniz, 5162 Meadowood Mall Circle.

New Licenses - Liquor

b. 275 Hill St., Brett Rosselli, 275 Hill Street, Suite 100.

c. Old Granite Street Eatery, Ryan C. Gold and Justin C. Owen, 243 South Sierra Street.

Change of Ownership – Liquor

d. Go Fer Gas, Bankim Amin and Vikram Patel, 4600 North Virginia Street.

e. Molly's Swiss Chalet, Erin Lee Maddox, 501 Mill Street.

From: Ana Navarro, Revenue Program Manager

Summary: City Council approval of Privileged License applications is required for the licenses to be issued. Staff recommends Council approval of the Privileged License applications.

Background: Applications have been processed and approved by the Community Development-Zoning Division. Some applications are still being reviewed by the Police Department, but are submitted for Council approval subject to Police Department approval in the interest of providing more timely service to applicants. No licenses will be issued without Police Department approval. Required fees have been submitted with the applications.

Discussion: Reno Municipal Code 5.05.008 states that license applications for Gaming, Liquor, Pawnbroker, Secondhand Merchandise, Escort Services and Interactive Cabaret must first be approved by the City Council.

Recommendation: Staff recommends Council approval of the Privileged License applications, subject to Police Department approval.

Proposed Motion: I move to approve staff recommendation.

Business License Applications Scheduled to Come Before the City Council
on 02/24/10.

New License – Cabaret

- a. 775 Gastro Pub – John L. Leniz and Sarah Y. Leniz; 5162 Meadowood Mall Circle.
 - 1. Description of Business: Restaurant with cabaret.
 - 2. Inspection Update: (Q100663)
 - i. Zoning Inspection – Passed/Approved (MU)
 - ii. Fire Inspection – Pending
 - iii. Building Inspection – Passed/Approved
 - iv. Health Inspection – Passed/Approved
 - v. Police Inspection – Pending

New Licenses – Liquor

- b. 275 Hill St. – Brett Rosselli; 275 Hill Street, Suite 100.
 - 1. Description of Business: Restaurant with dining room alcohol.
 - 2. Inspection Update: (Q100664)
 - i. Zoning Inspection – Passed/Approved (MU)
 - ii. Fire Inspection – Pending
 - iii. Building Inspection – Pending
 - iv. Health Inspection – Pending
 - v. Police Inspection – Pending
- c. Old Granite Street Eatery – Ryan C. Gold and Justin C. Owen; 243 South Sierra Street.
 - 1. Description of Business: Restaurant with dining room alcohol.
 - 2. Inspection Update: (Q100655)
 - i. Zoning Inspection – Passed/Approved (MU)
 - ii. Fire Inspection – Pending
 - iii. Building Inspection – Pending
 - iv. Health Inspection – Pending
 - v. Police Inspection – Pending

Change of Ownership – Liquor

- d. Go Fer Gas – Bankim Amin and Vikram Patel; 4600 North Virginia Street.

1. Description of Business: Convenience store selling packaged liquor.

2. Inspection Update: (Q100654)

- i. Zoning Inspection – Passed/Approved (MU)
- ii. Fire Inspection – Pending
- iii. Building Inspection – Pending
- iv. Health Inspection – Passed/Approved
- v. Police Inspection – Pending

e. Molly's Swiss Chalet – Erin Lee Maddox; 501 Mill Street.

1. Description of Business: Recreation center with cabaret.

2. Inspection Update: (Q100662)

- i. Zoning Inspection – Passed/Approved (MU)
- ii. Fire Inspection – Pending
- iii. Building Inspection – Passed/Approved
- iv. Health Inspection – Passed/Approved
- v. Police Inspection – Pending

STAFF REPORT

To: Mayor and City Council

Agenda Item: C.2

Date: 2-24-2010

Thru: Donna Dreska, City Manager

C.2

Subject : Staff Report: Approval of Consultant Agreement with Kennedy Jenks Consultants for Facilitation and Technical Assistance for a Coordinated Monitoring Program in an amount not to exceed \$64,500 (Nevada Nonpoint Source 319(h) grant).

From: Terri Svetich, Acting Engineering Manager

Summary: Council approved a contract with the State of Nevada for a grant in the amount of \$65,000.00 to develop and facilitate a coordinated monitoring program for the Truckee River on behalf of the Storm Water Permit Coordinating Committee (SWPCC). The SWPCC went through a Request for Qualifications (RFQ) process to identify a qualified consultant to assist in this effort. Kennedy Jenks Consultants (KJC) was the highest ranked consultant. Staff recommends Council approval of the consultant agreement with KJC in an amount not to exceed \$64,500.

Previous Council Action:

April 22, 2009 Approval of Intrastate Interlocal Contract between the State of Nevada and the City of Reno for a Nevada Nonpoint Source 319(h) grant in the amount of \$65,000 for a Truckee River Coordinated Monitoring Program

November 19, 2008 Approval of an Agreement with Ecological Research Associates for the Truckee River Info Gateway (TRIG) and Total Maximum Daily Load Consulting relating to Truckee River Water Quality, in the amount of \$69,355 to be shared between the cities of Reno and Sparks with Reno's share being \$47,598.34.

March 24, 2004 Approval of the First Amended Agreement Regarding National Pollutant Discharge Elimination Storm Water Permit Implementation

Background: The City of Reno, City of Sparks, and Washoe County are co-permittees on a regional storm water discharge permit as required by the Clean Water Act and is issued by NDEP. To manage the multiple-agency permit, an interlocal agreement between the parties was developed in 1990 and amended in 2004. The 2004 amendment concluded the same committee would also address matters pertaining to watershed management as it relates to water quality. The City of Reno serves as the lead agency on the permit; thus the basis for the agreement with Kennedy/Jenks Consultants being presented to only the City of Reno's governing body.

Last year the Legislative Oversight Committee (LOC) on the Western Regional Water Commission (WRWC) expressed concern regarding the adequacy of monitoring and

identification of sources of pollutants to the Truckee River. Consequently, the NDEP has brought together stakeholders interested in Truckee River Monitoring to develop a Coordinated Monitoring Program and is taking steps to develop a Memorandum of Understanding in an effort to satisfy the LOC's concerns. The SWPCC recognized that the task of developing a coordinating a monitoring program will require leadership and completion of several defined tasks to accomplish the goals. With the support from the WRWC, the SWPCC applied for the 319(h) grant. The Cities of Reno and Sparks have already sponsored the development of the Truckeeriverinfo.org which is being recognized as the technical on-line tool for water quality data and reports on the Truckee River.

Discussion: Because of the unique skill set needed for this project, a Request for Qualifications (RFQ) was developed and advertised. Twelve consulting firms responded pursuant to the guidelines set forth in the RFQ. A multi-agency team was formed to review the submittals and conduct interviews of the top five candidate firms. The recommended firm was Kennedy Jenks Consultants (KJC). This recommendation was advanced to the SWPCC where the selection was approved and staff was directed to formulate the consultant agreement and take to City Council for consideration.

Financial Implications: The total project budget is \$139,079 with \$65,000 coming from State of Nevada 319(h) grant funds which requires a 50 percent match. The match will be achieved through in-kind services by the Cities of Reno and Sparks and Washoe County and expenditures already made by the Cities of Reno and Sparks for the development and maintenance of the TRIG website at www.truckeeriverinfo.org. No additional cash outlays will be necessary by any of the three entities.

Total Sources		City of Reno	City of Sparks	Washoe County
Nevada 319(h) grant funds	\$65,000			
TRIG (Cash expenditure already committed)		\$23,575	\$10,776	0
In-kind		\$15,855	\$10,396	\$13,478
\$139,079	\$65,000	\$39,430	\$21,171	\$13,478

Any invoices submitted by the consultant will be reviewed and approved by the Storm Water Permit Coordinating Committee. The City of Reno will pay the invoices and then be reimbursed from the State of Nevada in accordance with the terms of the Interlocal Contract.

Recommendation: Staff recommends Council approval of the Consultant Agreement with KJC, and authorization for the Mayor to sign.

Proposed Motion: I move to approve the staff recommendation.

Attachment – Consultant Agreement with KJC

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT, made and entered into this ____ day of _____, 2010, by and between the CITY OF RENO, hereinafter referred to as "CITY" and KENNEDY/JENKS CONSULTANTS, hereinafter referred to as "CONSULTANT."

WITNESSETH

WHEREAS, the CITY wishes to secure services for Facilitation and Technical Assistance to Prepare a Coordinated Monitoring Plan for the Truckee River and Tributaries, hereinafter referred to as "PROJECT;"

WHEREAS, CONSULTANT was selected by the Truckee River Memorandum of Understanding (MOU) signatories through the Stormwater Permit Coordinating Committee to facilitate and support the preparation of a coordinated monitoring plan; and

WHEREAS, CITY was selected to administer the agreement with CONSULTANT.

NOW THEREFORE, the CITY and CONSULTANT agree as follows:

1. Objectives.

The CONSULTANT shall serve as the CITY's engineer of record and shall give advice to the CITY during performance of services to which this Agreement applies. All services shall be performed by the Consultant or their sub-consultant.

2. Basic Services.

2.1 The CONSULTANT will perform the services set forth in Attachment A, consisting of 6 pages, as part of this agreement which is incorporated herein by this reference as if set forth in full herein. However, should any term and condition in the Attachment contradict a term of this Agreement, the terms and conditions of this Agreement shall control.

2.2 The CONSULTANT will not change its Project Manager without written approval from the CITY.

3. CITY Responsibility.

3.1 The CITY shall designate a Project Manager to act as the CITY's representative with respect to the work performed under this Agreement.

3.2 The CITY shall give prompt written notice to the CONSULTANT whenever the CITY observes or otherwise becomes aware of a problem with the project.

4. Authorization, Progress and Completion.

By execution of this Agreement, the CITY grants to the CONSULTANT specific authorization to proceed, upon written notice, with the services described in Article 2 of this Agreement, and shall continue until completed. All documents and materials shall be prepared in a timely manner, adhering to the schedule set forth in Attachment A.

5. Compensation.

5.1 Compensation for services performed as described in Article 2, for the duration identified in Article 4 of this Agreement shall be payable as set forth in Attachment A. The charge for services breakdown is as shown on Attachment A for a total not-to-exceed figure of \$64,800.00. This total not to exceed figure includes costs as well as fees.

5.2 Invoices for services rendered shall be submitted monthly. Payment by the CITY will be made within forty-five (45) calendar days of receipt.

6. Special Services.

No additional services shall be performed and no additional compensation shall be permitted without a CITY approved written "Supplemental Agreement". This supplemental agreement must be approved by City Council. Further, such supplemental agreement must be executed prior to the commencement or performance of any additional work.

7. Records to be Maintained by Consultant.

7.1 The CONSULTANT shall maintain records supporting requests for payment. Such records shall be available for inspection and audit by the CITY, and the CONSULTANT shall provide duplicate copies of all such records upon request by the CITY.

7.2 The information, conclusions and data generated during this Agreement by the CONSULTANT is for the use in accordance with the MOU. The CONSULTANT may not use this information, conclusions or data for any purpose other than to further the requirements of this Agreement. The CONSULTANT may not produce papers for professional journals or presentations for conferences without written permission and active participation by the CITY Project Manager.

8. Ownership of Documents.

Originals of all records, reports and other documents of service prepared by the CONSULTANT shall be property of the signatories of the MOU. All said documents of service shall be made available to the CITY and the signatories of the MOU during the course of or for use in the performance of this Agreement. Reuse of document of service for purposes other than their intended use under this Agreement shall be at CITY and the signatories of the MOU's sole risk.

9. Skill Level of Consultant.

Service performed by CONSULTANT will be conducted in a manner consistent with that level of care and skill ordinarily expected by members of the profession currently practicing in this area under similar conditions. CONSULTANT shall be responsible for the professional quality and technical accuracy of all services furnished by CONSULTANT.

10. Insurance.

The CONSULTANT shall maintain, during the term of this Agreement, an occurrence comprehensive general liability insurance for limits of not less than one million dollars (\$1,000,000) for bodily injury and property damages, per occurrence. As evidence of liability insurance coverage, the CITY will accept certification of insurance issued by an authorized representative of the insurance carrier. Coverage must be provided by an insurance company licensed to do business in the State of Nevada with an A.M. Best Rating of A – Class VII or better. Each certificate shall contain a 30-day written notice of cancellation to the certificate holder and shall name the CITY as an additional insured, if the policy so allows and at the expense of the CITY, if there is a cost.

CONSULTANT shall maintain during the term of this Agreement and for six years after the completion of the project errors and omissions insurance, with each subsequent renewal having a retroactive date which predates the date of this Agreement, in the amount of not less than one million dollars (\$1,000,000). As evidence of errors and omissions insurance coverage, the CITY will accept certification of insurance by an authorized representative of the insurance carrier. Each certificate will bear a thirty (30) day written day notice of cancellation to the certificate holder.

11. Indemnification.

a. To the fullest extent permitted by law, the CONSULTANT shall defend, indemnify and hold harmless the CITY and its officers, employees and agents (collectively "Indemnitees") from any liabilities, damages, losses, claims, actions or proceedings, including,

without limitation, reasonable attorneys' fees, that are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the CONSULTANT or the employees or agents of the CONSULTANT in the performance of this Agreement.

b. The CONSULTANT assumes no liability for the negligence or willful misconduct of any indemnitee or other consultants of indemnitee.

c. The CONSULTANT's indemnification obligations for claims involving "Professional Liability" (claims involving acts, error, or omissions in the rendering of professional services) and "Economic Loss Only" (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the proportionate extent of CONSULTANT's negligence or other breach of duty.

12. Intellectual Property Indemnity.

To the fullest extent permitted by law, CONSULTANT shall defend, protect, hold harmless, and indemnify CITY and the CITY related parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by CITY in writing. If CONSULTANT has reason to believe the use of a required design, process or product is an infringement of a patent, CONSULTANT shall be responsible for such loss unless such information is promptly given to CITY. This Indemnity Covenant shall survive the termination of this Agreement.

13. Taxes.

CONSULTANT shall pay any and all Federal, State and local taxes, charges, fees, or contributions required by law to be paid with respect to CONSULTANT's performance of this Agreement (including, without limitation, unemployment insurance, social security, and income taxes).

14. Independent Contractor.

The parties agree that CONSULTANT is an independent contractor and this Agreement is entered into in conformance with the provisions of NRS 284.173. The parties agree that CONSULTANT is not a CITY employee and there shall be no:

-
- a. Withholding of income taxes by the CITY;
 - b. Industrial insurance provided by the CITY;
 - c. Participation in group insurance plans which may be available to employees of the CITY;
 - d. Participation or contributions by either the independent contractor or CITY to any public employees retirement system;
 - e. Accumulation of vacation leave or sick leave;
 - f. Unemployment compensation coverage provided by CITY if the requirements of NRS 612.085 for independent contractors are met.

15. Workmen's Compensation Insurance.

CONSULTANT shall carry during the term of this Agreement, Workmen's Compensation Insurance under the laws of the State of Nevada, to cover any compensable injuries or diseases arising during the performance of this Agreement.

16. Business License.

CONSULTANT shall maintain in full force and effect throughout the term of this Agreement a current business license from the City of Reno.

17. Compliance with Legal Obligations.

CONSULTANT shall procure and maintain for the duration of this Agreement any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance law, or regulation to be held by CONSULTANT to provide the services required by this Agreement. CONSULTANT is solely responsible to pay assessments, premiums, permits and licenses required by law. Further, CONSULTANT agrees to comply with all applicable federal and state laws including, but not limited to, the Americans with Disabilities Act of 1990 and related standards, guidelines, and regulations (collectively "ADA") in providing the services identified in this Agreement. It is the responsibility of CONSULTANT to address in the performance of the services any and all access or other issues to assure compliance with the ADA.

18. Employment Opportunity.

CONSULTANT shall not discriminate against any employee or applicant for employment because of race, creed, color national origin, sex, sexual orientation or age. Sexual orientation means having or being perceived as having an orientation for heterosexuality,

homosexuality or bi-sexuality. Any violation of this provision by consultant shall constitute a material breach of contract.

19. Notices.

Any notices provided for herein shall be given in writing by certified mail, return receipt requested, or by personal service to:

CITY: City of Reno
Terri Svetich, Acting Engineering Manager
If by personal service
1 East First Street, 8th Floor
Reno, NV 89501
If by mail
P.O. Box 1900
Reno, NV 89505

CONSULTANT: Kennedy/Jenks Consultants
Dena Traina, P.E., Reno Office Manager
5190 Neil Road, Suite 210
Reno, NV 89502

20. Assignment.

This Agreement is binding on the heirs, successors, and assigns of the parties hereto. This Agreement is not to be assigned by either party without prior written consent of the other.

21. Integration.

This agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except by written amendment thereto signed by both parties.

22. Jurisdiction.

This Agreement shall be administered and interpreted under the laws of the State of Nevada. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in full force and effect.

23. Suspension of Work.

Either party may suspend, by written notice, all or a portion of the work under this Agreement, in the event unforeseeable circumstances, beyond the control of either party, make

normal progress in the performance of the work impossible. The party desiring to suspend the work must request that the work be suspended by notifying the other party, in writing, of the circumstances which are interfering with normal progress of the work. The time for completion of the work shall be extended by the number of days the work is suspended. In the event that the period of suspension exceeds ninety (90) working days, the terms of this Agreement are subject to renegotiation and both parties are granted the option to terminate work on the suspended portion of the project in accordance to Article 24 of this Agreement.

24. Termination of Work.

The CITY may terminate, by written notice, the work under this Agreement. The CONSULTANT may terminate work in the event the CITY fails to perform in accordance with the provisions of this Agreement. Termination of this Agreement is accomplished by fifteen (15) working days prior written notice from the party initiating termination to the other. Notice of the termination shall be delivered by certified mail with receipt of delivery returned to the Sender. In the event of termination, the CONSULTANT shall perform such additional work, as is necessary for the ordinary filing of documents, and closing shall not exceed ten percent (10%) of the total time expended on the termination portion of the project prior to the effective date of termination. The CONSULTANT shall be compensated for the terminated portion of the work on the basis of work actually performed prior to the effective date of termination, plus the work required for filing and closing. Charges for the latter work are subject to the ten percent (10%) limitation described in this Article.

CONSULTANT expressly agrees that this Agreement shall be terminated immediately if for any reason local, federal and/or State Legislature funding ability to satisfy this Agreement is withdrawn, limited, or impaired.

25. Dispute Resolution.

All claims, counterclaims, disputes and other matters in question between the CITY and the CONSULTANT arising out of, or relating to, this contract or breach of it, unless otherwise settled, may be mediated before initiation of a judicial action.

Unless the parties mutually agree otherwise, mediation will be in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association currently in effect. The American Arbitration Association will not be used to administer or facilitate the process

or the selection of the mediators. Instead, the parties will attempt to mutually agree to the appointment of one mediator. If the parties cannot agree to one mediator, each party shall select one mediator and the two mediators will appoint a third mediator. The parties agree to split the mediator(s) fees and expenses. Each party shall bear their own attorney's fees and other costs incurred for the mediation.

26. Attorneys' fees.

If either party breaches this Agreement, the prevailing party in any litigation is entitled to recover its court costs and reasonable attorneys' fees.

27. Severability.

If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

28. Due Authorization.

Each party represents that all required authorizations have been obtained to execute this Agreement and for the compliance with each and every term hereof. Each person signing this Agreement warrants and represents to the other party that he or she has actual authority to execute this Agreement on behalf of the party for whom he or she is signing.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals the year and date first above written.

CITY OF RENO

ATTEST:

Robert A. Cashell, Sr., Mayor

Reno City Clerk

KENNEDY/JENKS CONSULTANTS

Dena Traina, P.E., Reno Office Manager

APPROVED AS TO LEGAL FORM:

Deputy City Attorney

ATTACHMENT A

Scope of Work for Facilitation and Technical Assistance to Prepare a Coordinated Monitoring Plan for the Truckee River and Tributaries

Kennedy/Jenks Consultants was selected by the Truckee River Memorandum of Understanding (MOU) Group through the Truckee Meadows Stormwater Permit Coordinating Committee to facilitate and support the preparation of a coordinated monitoring plan. This plan will be prepared to meet the scope described in the MOU and the 319(h) Grant Application.

Project Understanding

NDEP encouraged the establishment of a MOU between stakeholders interested in Truckee River Monitoring to develop a Coordinated Monitoring Plan. The main task of this proposed project is to convene a task force of representatives from the MOU signatory stakeholders to develop a Coordinated Water Quality Monitoring Plan that seeks to coordinate and optimize the combined river monitoring efforts. Specific objectives of the task force would include:

- Identify the regulatory drivers and scientific reasons the MOU signatories are engaged in monitoring;
- Identify current monitoring locations and monitored water quality parameters;
- Identify and address deficiencies in current monitoring locations and practices;
- Develop a plan for migrating existing water quality data and relevant reports held by the monitoring entities to the Truckee River Information Gateway website (TRIG.org); and
- Develop a coordinated and integrated water quality monitoring plan that addresses regulatory and scientific needs and requirements, while optimizing data collection activities.

The outcome of this effort will realize the following benefits:

- Increasing efficiency and minimizing duplication among the MOU group
- Simplifying data sharing amongst interested Parties through a web-based central clearinghouse of technical and water-related information
- Developing robust data that may facilitate timely identification of potential problems with water quality or environmental degradation of the Truckee River,
- Promoting the future protection of the Truckee River; and
- Encouraging the Parties to share this information with each other, the public, and other interested parties.

Project Approach

As described in the Request for Qualifications for this project, Kennedy/Jenks Consultants' role in the project is to facilitate meetings, provide technical assistance where appropriate, and to compile the Coordinated Monitoring Plan into a web-based document that can be easily accessed and updated as needed. We understand that the 319(h) grant includes matching in-kind work provided by the MOU group, and the MOU group's experience, technical knowledge, and project buy in are essential to producing a

useful, widely adopted Coordinated Monitoring Plan. As directed by the group, the MOU group will take lead responsibility for several tasks including preparation of GIS based sample location maps, historical data compilation, and development and data entry for the TRIG database. MOU members with specific technical expertise will also be responsible for work in the technical subgroups in the areas of sampling methods, hydrologic measurements, and laboratory analytical methods.

The Kennedy/Jenks Consultants' Scope of Services is summarized below. We have also indicated the scope of tasks that will be the responsibility of the MOU group, and where technical support from MOU members with specific expertise will be required. Proposed meeting dates and schedules are placeholders; a final project schedule will be prepared following the kick off meeting with the MOU group.

Scope of Services

Our scope of services are described below and summarized on the attached Table 1.

Task 1 – Project Management

This task includes project set up, a project “concepts and criteria review” for quality assurance, review of invoices, and regular project status updates to the MOU group.

Deliverables: Internal project memoranda, verbal reports on project status, project budget status reports.

Duration: 2/10/10 to 11/5/10

K/J Budget: \$1,800

Task 2 – Data Gathering

This task includes initial data needs assessment through development of a pre-kickoff questionnaire to the MOU group, compilation of historical data, and data entry; the latter two tasks will be led by the MOU group.

Task 2A - Prepare Coordinated Monitoring Plan User Questionnaire

Kennedy/Jenks Consultants will prepare a draft questionnaire for MOU group review, and a final questionnaire, which we will compile and summarize for the kick off meeting. The purpose of this questionnaire is to gather information about the data needs and requirements of the MOU group.

Deliverables: Draft and final questionnaire; spreadsheet summary of data needs.

Duration: 2/10/10 to 2/17/10

K/J Budget: \$1,600

Task 2B - Compile Existing Data from MOU Group

The MOU group will lead this task to compile historical monitoring data from the MOU group, preferably in electronic format with laboratory data and field notes back up for quality assurance coding. We have included 2 hours for consultation with our GIS/database and 4 hours of facilitator time to assist with data compilation issues.

Deliverables: MOU group will compile historical data from MOU group.

Duration: 2/15/10 to 4/16/10

K/J Budget: \$1,000

Task 2C - Enter Historical Data into TRIG Database

The MOU group will enter the compiled data into the TRIG database as needed to update the historical monitoring records. This task will be completed after the technical group has met and developed standards for the database under Task 3E below. We have included a budget of 4 hours of technical support by our GIS/Database expert and two hours of facilitator time to support this subtask.

Deliverables: Updated entries by the MOU group.

Duration: 6/18/10 to 9/6/10

K/J Budget: \$1,000

Task 3 – Kick Off and Technical Meetings

This task covers the scoping kick off meeting and technical meetings facilitated by Kennedy/Jenks Consultants. We anticipate that during the kick off meeting, we will assign technical experts from the MOU group to work on appropriate areas of the Coordinated Monitoring Plan. We understand that John Buzzone, Washoe County Department of Water Resources, will administer the Kennedy/Jenks Consultants' work. The work groups will set internal deadlines for completing their sections, with a goal of completing the draft Coordinated Monitoring Plan in early August 2010. For budgeting purposes, we have assumed that the Project Manager, Gregg Bryden will participate in Technical meetings 1 through 4 and 6, and Colleen Haraden will provide GIS technical support, by video conference. Mr. Bryden will attend the kick off and meeting 5 in person. Candice Siwarga will serve as the meeting coordinator for all meetings, and will be assisted by Terry Rees or Tom Swan.

Task 3A - Kick off Meeting

Kennedy/Jenks Consultants will prepare an agenda and facilitate a kick off meeting where the MOU group will set a schedule for meetings, develop subgroups, and outline scope of Coordinated Monitoring Plan. Kennedy/Jenks Consultants will present a summary of the data needs and requirements questionnaire described under Task 2A above.

Deliverables: Meeting agenda, summary of data needs questionnaire, and meeting notes.

Duration: 2/25/10 to 2/29/10

K/J Budget: \$3,700

Task 3B - Technical Meetings

Under this task, Kennedy/Jenks Consultants will facilitate a series of meetings to cover technical issues in the Coordinated Monitoring Plan. The MOU group will participate and in several instances, take the lead in producing the work products.

Technical Meeting 1 - Map sampling locations for MOU group users

The MOU group will be the lead in generating GIS maps of sampling locations needed to meet the group's various permit, study, and monitoring needs. Much of the information on the current sampling locations will come from the questionnaire (Task 2A).

Kennedy/Jenks Consultants will facilitate efforts to find common sampling and flow measurement locations to reduce redundancy and to fill in gaps needed for source identification, model verification and calibration, and stream health monitoring.

Deliverables: Kennedy/Jenks Consultants to produce meeting agenda and notes, MOU group will produce GIS maps of sampling locations.
Duration: 3/15/10 to 3/19/10
KJ Budget: \$3,000

Technical Meeting 2 - Conform sampling methods for surface water, sediment, biomonitoring, and flow measurement

This meeting will focus on finding common sampling methods needed to obtain water, sediment, and biota data, as well as standardizing flow measurement methods. Kennedy/Jenks Consultants will provide technical support in addition to meeting facilitation.

Deliverables: Meeting agenda, meeting notes, draft section of Coordinated Monitoring Plan on sampling and data collection methods.
Duration: 4/12/10 to 4/16/10
Budget: \$5,400

Technical Meeting 3 - Establish common analytical methods and required detection limits

This meeting will focus on field and laboratory analytical methods. The MOU group will provide input on currently used field and laboratory analytical methodologies, including detection limits and QA/QC needs. Kennedy/Jenks Consultants will provide technical assistance in comparing and contrasting differing analytical methodologies to help the MOU group determine which analytical methodologies are most appropriate for use by the MUO parties collectively, and to be used in the Coordinated Monitoring Plan.

Deliverables: Kennedy/Jenks Consultants will prepare meeting agenda and notes, and a draft section of the Coordinated Monitoring Plan on approved laboratory methods, including summary tables.
Duration: 5/17/10 to 5/21/10
KJ Budget: \$6,200

Technical Meeting 4 - Develop standards for data entry into TRIG

Kennedy/Jenks Consultants will facilitate and the MOU group will take the lead on developing templates and meta data for entering river analytical, flow, and biomonitoring data into the Truckee River Information Gateway (TRIG) system. This will include developing standardized sample identification nomenclature, sampling location identification numbers, flags for quality assurance data qualifiers, and working with MOU and commercial laboratory information systems to develop means to easily import electronic deliverables from laboratories to the TRIG database.

Deliverables: Kennedy/Jenks Consultants will produce the meeting agenda and notes; the MOU group will prepare a draft section and templates covering database entry procedures.
Duration: 6/14/10 to 6/18/10
Budget: \$3,500

Technical Meeting 5 - Review findings of technical meetings, review and approve outline of Coordinated Monitoring Plan

This meeting will provide all the MOU stakeholders with an opportunity to review the work of the technical subgroups and approve a final outline of the Coordinated Monitoring Plan. We anticipate short presentations from each technical meeting and copies of the draft Coordinated Monitoring Plan outline. The goal of this meeting is to obtain consensus of the MOU group on the Coordinated Monitoring Plan format and to obtain user "buy in" on the final work product, so it is widely used and adopted.

Deliverables: Kennedy/Jenks Consultants will produce the meeting agenda and notes, and will prepare a draft Coordinated Monitoring Plan outline for group review and comment.

Duration: 5/17/10 to 5/21/10

KJ Budget: \$3,800

Task 4 – Prepare Draft and Final Coordinated Monitoring Plan

Under this task, Kennedy/Jenks Consultants will prepare the draft and final Coordinated Monitoring Plan. The Coordinated Monitoring Plan will cover the technical tasks described above, and will include document control and update procedures to make it easy to update the document in the future and ensure that all MOU group members are following the same document version. The Coordinated Monitoring Plan is to be an electronic document, with minimal paper copies. Comments on the drafts are to be submitted electronically.

Prepare Draft Coordinated Monitoring Plan

Kennedy/Jenks Consultants will prepare the draft Coordinated Monitoring Plan based on the notes and work products from the technical meetings, and our technical input. The document will be carefully edited and reviewed by Kennedy/Jenks Consultants' technical experts and a professional technical writer. The Coordinated Monitoring Plan is intended to be an electronic document and will include hyperlinked internal indexing and references.

Deliverables: Kennedy/Jenks Consultants will prepare the Draft Coordinated Monitoring Plan, to be posted to a secure web or file server site for distribution to the MOU group.

Duration: 7/19/10 to 8/30/10

KJ Budget: \$23,500

MOU group review of Coordinated Monitoring Plan

Under this task, the MOU group will review and provide electronic comments on the draft Coordinated Monitoring Plan. Kennedy/Jenks Consultants will compile the comments.

Deliverables: MOU group will provide comments on the draft Coordinated Monitoring Plan.

Duration: 9/6/10 to 10/6/10

KJ Budget: \$0

Technical Meeting 6 - Reconcile review comments on draft Coordinated Monitoring Plan

This meeting will be held with MOU members that have potentially conflicting or different comments on the Draft Coordinated Monitoring Plan that require resolution. Kennedy/Jenks Consultants will facilitate and provide technical support as needed to resolve comments.

Deliverables: Final draft comments on the Coordinated Monitoring Plan
Duration: 10/11/10 to 10/15/10
KJ Budget: \$4,000

Produce final electronic version of Coordinated Monitoring Plan

Kennedy/Jenks Consultants will prepare the final electronic version of the Coordinated Monitoring Plan and post it to a secure intranet site for distribution. Kennedy/Jenks Consultants will help hand off the document to the MOU group for future maintenance, including providing backup WORD, Excel, CAD, and GIS files for future updating.

Deliverables: Kennedy/Jenks Consultants will produce the final electronic version of the Coordinated Monitoring Plan and provide the MOU group with back up files.
Duration: 10/15/10 to 11/5/10
KJ Budget: \$6,300

Project Total Budget = \$64,800.

STAFF REPORT

Agenda Item: C.3

Date: 2-24-2010

To: Mayor and City Council

Thru: Donna Dreska, City Manager

C.3

Subject : Staff Report: Acceptance of a grant award to the City of Reno from the Boys and Girls Club of the Truckee Meadows, via the Adopt-A-School Program and related police operations, to reduce child involvement in crime, drug use, gang participation, and violence in the amount of \$31,400.

From: Michael Poehlman, Chief of Police

Summary: Staff recommends Council acceptance of a grant award in the amount of \$31,400 from the Boys and Girls Club of the Truckee Meadows, via the Adopt-A-School program and related police operations, to show children how to resist bad influences such as crime, drug use, gang participation and violence.

Previous Council Action: The Police Department has been a part of the Weed & Seed grant program since FY 97/98, with the most recent award granted in FY 08-09 for the Southeast site.

Discussion: The Southeast Reno Weed & Seed site received official recognition in June 2004. This award represents the site's fourth award to implement its strategy. The boundaries of the designated area are from Virginia Street East on Vassar to Reno/Tahoe International Airport, South to South McCarran Blvd, McCarran Blvd west to Virginia Street, Virginia Street north to Moana Lane, west to Plumas Street, Plumas Street north to Hillcrest Drive and Hillcrest Drive east to Virginia Street.



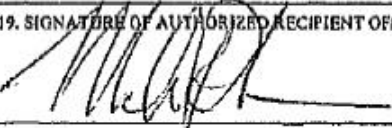
During this project period law enforcement efforts will focus on the Adopt-A-School program and other related police operations to show children how to resist bad influences such as crime, drug use, gang participation and violence. Community policing goals include reducing the occurrences of graffiti and graffiti-based threats and providing positive mentoring for youth.

Financial Implications: The City has been awarded a grant in the amount of \$31,400 and it must be used in full by July 31, 2010 – no match is required.

Legal Implications: The City, by accepting this grant, agrees to comply with the terms of the grant application, provide information for evaluation to the granting organization, and provide quarterly reports on program activities, and monthly financial reports, which will be completed by the Police Department. Failure to adhere to the grant requirements could affect future funding.

Recommendation: Staff recommends Council acceptance of the grant award in the amount of \$31,400.

Proposed Motion: I move to approve the staff recommendation.

 Department of Justice Office of Justice Programs Community Capacity Development Office		Grant		PAGE 1 OF 3
1. RECIPIENT NAME AND ADDRESS (including Zip Code) Boys and Girls Club of Truckee Meadows 2680 East 9th Street Reno, NV 89512-3231		4. AWARD NUMBER: 2009-AVB-QX-0031		
		5. PROJECT PERIOD: FROM 08/01/2009 TO 07/31/2010 BUDGET PERIOD: FROM 08/01/2009 TO 07/31/2010		
1A. GRANTEE IRS/VENDOR NO. 880142068		6. AWARD DATE 09/02/2009	7. ACTION Initial	
		8. SUPPLEMENT NUMBER 00		
		9. PREVIOUS AWARD AMOUNT \$ 0		
3. PROJECT TITLE Southeast Reno - 2nd Site Weed and Seed Initiative		10. AMOUNT OF THIS AWARD \$ 133,387		
		11. TOTAL AWARD \$ 133,387		
12. SPECIAL CONDITIONS THE ABOVE GRANT PROJECT IS APPROVED SUBJECT TO SUCH CONDITIONS OR LIMITATIONS AS ARE SET FORTH ON THE ATTACHED PAGE(S).				
13. STATUTORY AUTHORITY FOR GRANT This project is supported under 42 U.S.C. sections 103-105				
15. METHOD OF PAYMENT PAPRS				
AGENCY APPROVAL		GRANTEE ACCEPTANCE		
16. TYPED NAME AND TITLE OF APPROVING OFFICIAL Laurie Robinson Acting Assistant Attorney General		18. TYPED NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL Mike Wurm Chief Professional Officer		
17. SIGNATURE OF APPROVING OFFICIAL 		19. SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL 		19A. DATE 9/17/09
AGENCY USE ONLY				
20. ACCOUNTING CLASSIFICATION CODES FISCAL FUND BUD. DIV. YEAR CODE ACT. OFC. REQ. SUB. POMS AMOUNT X Q WS 26 00 00 133387		21. IWSAGT0077		

OJP FORM 4006/2 (REV. 5-87) PREVIOUS EDITIONS ARE OBSOLETE.

OJP FORM 4006/2 (REV. 4-89)



Department of Justice
Office of Justice Programs
Community Capacity
Development Office

**AWARD CONTINUATION
SHEET
Grant**

PAGE 2 OF 3

PROJECT NUMBER 2009-AWS-QX-0081

AWARD DATE 09/02/2009

SPECIAL CONDITIONS

1. The recipient agrees to comply with the financial and administrative requirements set forth in the current edition of the Office of Justice Programs (OJP) Financial Guide.
2. The recipient acknowledges that failure to submit an acceptable Equal Employment Opportunity Plan (if recipient is required to submit one pursuant to 28 C.F.R. Section 42.302), that is approved by the Office for Civil Rights, is a violation of its Certified Assurances and may result in suspension or termination of funding, until such time as the recipient is in compliance.
3. The recipient agrees to comply with the organizational audit requirements of OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, and further understands and agrees that funds may be withheld, or other related requirements may be imposed, if outstanding audit issues (if any) from OMB Circular A-133 audits (and any other audits of OJP grant funds) are not satisfactorily and promptly addressed, as further described in the current edition of the OJP Financial Guide, Chapter 19.
4. Recipient understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval of OJP.
5. The recipient must promptly refer to the DOJ OIG any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has either 1) submitted a false claim for grant funds under the False Claims Act; or 2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving grant funds. This condition also applies to any subrecipients. Potential fraud, waste, abuse, or misconduct should be reported to the OIG by -

mail:

Office of the Inspector General
U.S. Department of Justice
Investigations Division
950 Pennsylvania Avenue, N.W.
Room 4706
Washington, DC 20530

e-mail: olg.hotline@usdoj.gov

hotline: (contact information in English and Spanish): (800) 869-4499

or hotline fax: (202) 616-9881

Additional information is available from the DOJ OIG website at www.usdoj.gov/olg.

6. Grantee acknowledges that this award has a limited obligation and payment period and is not eligible to be supplemented with funds from other fiscal years. Therefore, timely implementation of this project is required.
7. The grantee/fiscal agent and Steering Committee recognizes that it must come into compliance with all new statutory requirements for Weed and Seed programs. See 42 U.S.C. Section 104. This includes, but is not limited to, amending its existing Operating Policies and Procedures, consistent with guidance that will be provided by CCDO, to include the U.S. Attorney (for the District encompassing the community) and the Drug Enforcement Administration's special agent in charge (for the jurisdiction encompassing the community) as voting members of the Steering Committee.



Department of Justice
Office of Justice Programs
Community Capacity
Development Office

**AWARD CONTINUATION
SHEET
Grant**

PAGE 3 OF 3

PROJECT NUMBER 2009-VS-QX-0081

AWARD DATE 09/02/2009

SPECIAL CONDITIONS

8. While specific program strategies may vary from site to site, the planning, development and execution for the following elements shall be common to all Weed and Seed sites. These common elements are: (1) to organize and regularly convene a Weed and Seed steering committee; (2) to maintain focus on the four components in the target neighborhood; (3) to screen applicants working with children while selecting and mobilizing resources to address neighborhood problems; and (4) to regularly revisit goals, objectives, and the implementation strategies and schedules. Failure to substantially comply with these elements is cause to discontinue grant funding.
9. The grantee agrees to require that organizations which receive grant funds certify, as part of the contract, that they have appropriate hiring policies and screening procedures for employees who will be working with youth and other residents as part of the Weed and Seed strategy.
10. Grantee agrees that if it chooses to award mini grants (sub-grants), those mini grant awards will be made for criminal justice purposes. Grantee also agrees to ensure that these procedures comply with the OJP Financial Guide. For purposes of this condition, "criminal justice purposes" shall mean those activities contemplated in the definition of "criminal justice" found in the Omnibus Crime Control and Safe Streets Act, 42 U.S.C : 3791 (a)(1). "Criminal justice" is defined as "activities pertaining to crime prevention, control, or reduction, or the enforcement of the criminal law, including, but not limited to, police efforts to prevent, control, or reduce crime or to apprehend criminals, including juveniles, activities of courts having criminal jurisdiction, and related agencies (including but not limited to prosecutorial and defender services, juvenile delinquency agencies and pretrial service or release agencies), activities of corrections, probation, or parole authorities and related agencies assisting in the rehabilitation, supervision, and care of criminal offenders, and programs relating to the prevention, control, or reduction of narcotic addiction and juvenile delinquency."
11. Grantee agrees to submit a copy of any revisions to the previously submitted and approved Weed and Seed Steering Committee Policies and Procedures. These revisions should be submitted to CCDO within 90 days of the adoption of the revision.
12. The grantee agrees to submit a Government Performance Results Act (GPRA) Report for each calendar year in which the grant remains open. These GPRA reports are due when specified by CCDO, reporting the results from the preceding calendar year.
13. The grantee agrees to comply with the applicable requirements of 28 C.F.R. Part 38, the Department of Justice regulation governing "Equal Treatment for Faith Based Organizations" (the "Equal Treatment Regulation"). The Equal Treatment Regulation provides in part that Department of Justice grant awards of direct funding may not be used to fund any inherently religious activities, such as worship, religious instruction, or proselytization. Recipients of direct grants may still engage in inherently religious activities, but such activities must be separate in time or place from the Department of Justice funded program, and participation in such activities by individuals receiving services from the grantee or a sub-grantee must be voluntary. The Equal Treatment Regulation also makes clear that organizations participating in programs directly funded by the Department of Justice are not permitted to discriminate in the provision of services on the basis of a beneficiary's religion.

STAFF REPORT

To: Mayor and City Council

Agenda Item: C.4

Date: **2-24-2010**

Thru: Donna Dreska, City Manager

C.4

Subject : Staff Report: Approval of Bid Award to Artistic Fence for Security Fencing at the Reno Police Department Evidence Warehouse in the amount of \$39,430 (2009 Recovery Act JAG Grant).

From: Michael Poehlman, Chief

Summary: The City received a grant award to install additional security fencing around the facility to better protect the staff and the process of loading and unloading evidence for storage. Staff recommends Council approval to purchase the fencing from Artistic Fence in the amount of \$39,430.

Background: One and a half years ago the evidence warehouse was moved to a new location to save money that had been going to a rented facility, however additional external security fencing was needed to properly protect the location. On March 25, 2009 the Council approved a grant award for the 2009 Recovery Act JAG grant of \$440,000.00 which included a budget item for this project.

Discussion: The Public Works Department sent the project out to bid and received back one incomplete response from Savers Fence and two complete responses from Guard-All Fence (\$41,124) and Artistic Fence (\$39,430). Staff recommends making the purchase from the lower responsible bidder.

Financial Implications: The costs for this project have been allocated and budgeted in the 2009 Recovery Act JAG grant.

Legal Implications: It is important to protect employees and the evidence they manage, to reduce such events as worker's compensation claims or the potential for stolen evidence and legal or financial liability. Requirements per the grant are that all materials used to build the fence are American made and the company has submitted a letter stating they guarantee to meet this requirement. Failure to comply with these requirements may result in a denial of grant funding.

Recommendation: Staff recommends Council approval of the purchase of security fencing for the Police Department Evidence warehouse from Artistic Fence per their bid of \$39,430.

Proposed Motion: I move to approve the staff recommendation.

**PUBLIC WORKS MAINTENANCE & OPERATIONS
PURCHASING REQUISITION**

DATE 11-20-09 REQUESTED BY MIKE WHAN DIVISION RENO POLICE DEPT.

REQUEST: PURCHASE ORDER ☒ DISBURSEMENT REQUEST ☐ USE A BLANKET PO ☐ CREDIT CARD ☐

DELIVER ITEM TO: PD Evidence Warehouse ADDRESS IF NOT 1640 E. Commercial Row

BIDDER/VENDOR - FIRMS THAT BID ON PURCHASE	VERBAL/WRITTEN	SOLE SOURCE	TOTAL
1 SAVER FENCE	WRITTEN	<input type="checkbox"/>	\$ N/A
2 GUARD-ALL FENCE	WRITTEN		\$41,124.00
3 ARTISTIC FENCE	WRITTEN		\$39,430.00

QTY	UNIT	COMPLETE DESCRIPTION OF ITEM BEING PURCHASED (I.E., PARTS #, ETC.)	UNIT PRICE	TOTAL
			\$	\$39,430.00
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$
		FREIGHT EXPENSE	\$	\$
		GRAND TOTAL:	\$	\$39,430.00

JUSTIFICATION FOR PURCHASE/COMMENTS/SPECIAL INSTRUCTIONS:

LOW BID (SAVER FENCE DID NOT CONFORM TO BID SPECS.)

ACCOUNT NUMBER: _____

PROJECT CODE#: _____

COMMODITY CODE#: _____

PREFERRED VENDOR ARTISTIC FENCE

ADDRESS: 480 MORRILL AVE CITY: RENO ST: NV. ZIP: 89512

VENDOR CONTACT PERSON: LANCE B. PHONE#: 775-786-6002 FAX#: 775-786-7992

DOES VENDOR NEED AN ADVANCE PAYMENT: ☐ Y ☒ NO AMOUNT REQUESTED \$ _____

AUTHORIZED APPROVAL: _____ DATE: _____

STAFF REPORT

To: Mayor and City Council

Agenda Item: C.5

Date: 2-24-2010

Thru: Donna Dreska, City Manager

C.5

Subject : Staff Report: Approval of an Agreement for use of real property for fire training activities located at 170 Juniper Hill Road, Reno, Nevada.

From: Tim Alameda, Interim Fire Chief

Summary: The City has an opportunity for Fire Department use of certain structures destined for demolition or total destruction by the owner of real property, located at 170 Juniper Hill Road, Reno, Nevada. A Hold Harmless Agreement to protect the Fire Department and their respective officials, agents, and employees from liability has been developed and is provided for Council's consideration. Staff recommends Council approval of the Hold Harmless Agreement, and authorization for the Mayor to sign.

Previous Council Action: This matter was previously approved by Council on November 18, 2009. However, weather and climate inversion precluded the Fire Department from conducting the live fire training prior to the December 31, 2009 expiration date contained in the previously approved hold harmless agreement. The new agreement has an expiration date of March 31, 2010. The Fire Department expects to fully complete the training before that date.

Background: To provide fire training as realistically as possible the Fire Department uses opportunities to conduct training in buildings destined for demolition. The types of structures used must be completely free of asbestos and hazardous materials. They must be structurally sound, clean, accessible, and safe. The Lance J. and Joanne R. Eklund Family Trust, the owner of the property, has offered use of the property and structures located at 170 Juniper Hill Road, Reno, Nevada, for training, and will complete any asbestos and hazardous materials removal prior to use by the Fire Department. However, for City employees to enter the property for training purposes, the Owner(s) must enter a Hold Harmless Agreement with the City of Reno for protection of the City and its employees from liability.

Discussion: This is a rare opportunity to provide meaningful fire training in a realistic setting.

Financial Implications: There are no direct financial implications; however, the Agreement has contingent financial ramifications premised upon the hold harmless clauses contained in its terms.

Legal Implications: A Hold Harmless Agreement has been developed with the assistance of legal staff and is provided for consideration of the City Council.

Recommendation: Staff recommends City Council approval of the Hold Harmless Agreement, and authorization for the Mayor to sign.

Proposed Motion: I move to approve the staff recommendation.

**AGREEMENT FOR USE OF REAL PROPERTY
FOR FIRE TRAINING ACTIVITIES**

* * ◇ * *

This Agreement is made and entered into this _____ day of _____, 2010, between the City of Reno, Nevada, a municipal corporation, by and through the Reno Fire Department and its employees, officers, agents and assigns (hereafter referred to as “Department”), and the Lance J. and Joanne R. Eklund Family Trust, owner of a single family residence located at 170 Juniper Hill Road, City of Reno, County of Washoe, Nevada, 89519, and its respective officers, agents and assigns (hereafter referred to as the “Owner.”)

WITNESSETH:

WHEREAS, Owner desires to allow the Department to use a mutually agreed to designated property located at 170 Juniper Hill Road, City of Reno, County of Washoe, Nevada (APN# 009-131-51) (hereafter referred to as the “Property”), for the Department’s fire training activities from the execution of this Agreement through March 31, 2010. Owner consents that the designated use in this Agreement shall not constitute a trespass by the Department as such is an authorized use by Department; and

WHEREAS, the Owner represents that the Trust is the sole Owner of the Property and no other person has any right, title, or interest of any kind in the Property and the undersigned has full authority and capacity to execute this Agreement; and

WHEREAS, the Owner understands that use of the Property, including any vegetation, structures and improvements, if there be any, located in the Property, by the Department may be potentially hazardous and will cause damage and/or destruction thereto as the anticipated training activities include breaching into the structure, live fire and burn activities; and

WHEREAS, the Owner desires to assume the full risk of and hold the Department harmless from any and all damage to the Property; and

WHEREAS, the Department understands that the use of the Property may be potentially hazardous and may create a risk of harm to its personnel and personal property; and

WHEREAS, the Department desires to assume the risk of any injury to its personnel and damage to its personal property and to hold the Owner harmless therefrom; and

NOW THEREFORE, the foregoing recitals are incorporated by reference into the following agreement and the parties further agree as follows:

1. Owner agrees that the Department may use the Property, including any vegetation, improvements, structures, or personal property of any kind located thereon for any and all training exercises desired by the Department, including, but not limited to, any form of live fire and burn extinguishment, roof top ventilation, water supply evolutions, chain saw training and any other related training.

2. Prior to the use of the Property by the Department, Owner agrees to comply with all Washoe County District Health Department and other regulatory agencies regulations and local and state laws, as applicable, pertaining to demolition of structures, including obtaining any required asbestos assessments and abatements, demolition permits, and other permits, and payment of all related fees.

3. Owner represents the Trust is the sole Owner of the Property and has the right to grant and hereby grants permission for granting access to and use of the Property as set forth in this Agreement.

4. Except as provided otherwise by this Agreement, which excludes all forms of damage to the Property, including any vegetation, improvements, structures, or personal property of any kind located thereon, as a result of the training exercises and activities, the Department assumes the risk of and shall save, defend and hold harmless the Owner from any and all claims, including, but not limited to, personal injury to its employees, agents and assigns, arising out of the use of the Property by the Department for its training purposes, and from any and all costs, attorney fees, expenses and liabilities incurred in the defense of any such claim. In regards to any claims, the Department reserves its defenses and immunities as set forth in the Nevada Revised Statutes and any other applicable laws.

5. Except as provided otherwise in this Agreement, Owner assumes the full and complete risk of and shall save, defend and hold harmless the Department from any and all injuries incurred by it, including personal injury and for any damage to the Property, including, but not limited to, destruction of the Property, its vegetation, improvements, and structures, and any personal property of any kind located thereon by the Department, debris removal, and clean-up, and for any related attorney's fees and costs, which arises from the use of the Property in accordance with this Agreement.

6. Owner shall not make any claim for insurance coverage of any kind relating to the Department's use of the Property for its training activities and exercises.

7. Department makes no representations as to the availability or propriety of any tax deductions or benefits that Owner might be, or might not be, entitled to by reason of allowing the Department to use the Property. Owner assumes all obligations, responsibilities and duties associated with any and all tax matters and further agrees to hold the Department harmless therefrom.

8. No modification or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto, and approved by the Office of the City Attorney.

9. Neither party shall transfer, assign or attempt to assign this Agreement or any part thereof to any third party, without prior written consent of the other party.

10. This Agreement represents the entire understanding of the parties with respect to the matters contained herein. Any prior oral or written understanding between the parties shall be of no effect with respect to the terms of this Agreement. No modification or amendment of this Agreement shall be effective unless written and signed by the parties.

11. The parties hereto each represent that they have full authority to sign this Agreement.

12. This Agreement shall not be construed for or against a party by virtue of which party drafted the terms and conditions of this Agreement. This Agreement shall be construed and interpreted under the laws of the State of Nevada.

13. The failure of either party to enforce any provision of this Agreement shall not be construed or considered a waiver or release of such provision and such provision shall remain in full force and effect.

14. The undersigned represents that each of them has read this Agreement and understands all of its terms and conditions, and that they are executing it voluntarily and with full knowledge of its significance.

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/IN WITNESS WHEREOF, the undersigned acknowledges executing this Agreement in
Reno, Nevada, on this _____ day of _____, 2010.

OWNER

The Lance J. and Joanne R. Eklund Family
Trust

By: _____
Lance J. Eklund
Its: Trustee

By: _____
Joanne R. Eklund
Its: Trustee

CITY OF RENO

By: Robert A. Cashell, Sr.
Its: Mayor

APPROVED BY:

CITY CLERK

APPROVED BY:

CITY ATTORNEY'S OFFICE

STAFF REPORT

To: Mayor and City Council

Agenda Item: C.6

Date: **2-24-2010**

Thru: Donna Dreska, City Manager

C.6

Subject : Staff Report: Approval of an Engagement Letter with Special Counsel, of the University of Pennsylvania Law School for representation before the U.S. Supreme Court in the case of Conn v. City of Reno, No. 07-15572 (9th Cir. Jan. 8, 2010), with potential costs not to exceed \$15,000 (Risk Management).

From: John J. Kadlic, Reno City Attorney, through Tracy Chase, Chief Deputy City Attorney

Summary: The City Attorney's Office requests Council approval of the Engagement Letter with Special Counsel, of the University of Pennsylvania Law School, for representation before the U.S. Supreme Court in the case of Conn v. City of Reno, No. 07-15572 (9th Cir. Jan. 8, 2010). The representation provided by the Supreme Court Clinic will be in coordination with the Reno City Attorney's Office, and the University of Pennsylvania will provide the legal services at no charge, or Pro Bono, to the City of Reno. There is a provision that the City will be responsible for costs associated with printing, filing and submitting briefs in an amount not to exceed \$15,000.

Previous Council Action: None.

Discussion: The services of the Supreme Court Clinic will be under the guidance of Professor Stephanos Bibas. Professor Bibas's curriculum vitae and the Engagement Letter are provided for consideration of City Council

Financial Implications: Funds are available within the Risk Management budget for the costs associated with the legal services.

Recommendation: The City Attorney's Office recommends City Council approval of the Conn v. City of Reno certiorari petition in the U.S. Supreme Court Engagement Letter and authorization for the Mayor to sign such agreement.

Proposed Motion: I Move to approve staff recommendation.

Attachments: Engagement Letter
Curriculum Vitae – Professor Stephanos Bibas



3400 Chestnut Street
Philadelphia, PA 19104-6204
Tel. (215) 746-2297 Fax. (215) 573-2025
stephanos.bibas@gmail.com

Stephanos Bibas
Professor of Law and Criminology
Director, Supreme Court Clinic

12 February 2010

VIA US MAIL

John J. Kadlic
Reno City Attorney
P.O. Box 1900
Reno, NV 89505

Re: *Conn v. City of Reno* certiorari petition in the U.S. Supreme Court Engagement Letter

Dear Mr. Kadlic:

We are pleased to confirm that the University of Pennsylvania Supreme Court Clinic (“we” or “the Clinic”) has agreed to represent the City of Reno (“City”) and Reno Police Officers Ryan Ashton and David Robertson (collectively “Clients”) *pro bono* in connection with researching, drafting, and filing a certiorari petition in the Supreme Court of the United States in *Conn v. City of Reno*, No. 07-15572 (9th Cir. Jan. 8, 2010). This representation includes briefing and argument on the merits in the Supreme Court if the petition is granted but does not include any subsequent proceedings in lower courts after the Supreme Court representation is finished.

Pursuant to NRS 41.0339, the Reno City Attorney has accepted the defense of Officers Ryan Ashton and David Robertson because the factual circumstances known now indicate that the officers were acting in good faith within their course and scope of public employment. Should additional information be discovered that indicates that the alleged acts or omissions of the officers were not taken in good faith within the course and scope of their public employment, the procedures, as outlined in NRS 41.03415 and Nevada Rules of Professional Conduct, for withdrawing from the case shall be followed by the Reno City Attorney and the Clinic. At this time, the Reno City Attorney and Clinic are not aware of any facts which would rise to a conflict situation under law requiring disclosure to Clients and receiving a waiver of the alleged conflict pursuant to Nevada Rules of Professional Conduct. In other words, in some cases representing multiple co-defendants might raise a conflict of interest, because in some cases one defendant’s interests would be served by

asserting liability upon a co-defendant. Here, however, there appears to be no conflict of interest. The most promising line of defense, particularly at the Supreme Court stage, is that the City is exempt from municipal liability and that Officers Ashton and Robertson enjoy qualified immunity for their actions taken in good faith, in accordance with clearly established law, within the course and scope of their employment. If factual circumstances change, the Reno City Attorney's Office and the Clinic will follow applicable rules of professional conduct relating to conflicts of interest and possible withdrawal.

We will serve as lead counsel and have primary responsibility for researching and briefing this case, and as we discussed, we expect to conduct the oral argument in the case as well. We look forward to working closely with the Reno City Attorney's Office as part of a team throughout the case. We agree to list John J. Kadlic, Reno City Attorney, and any requested Deputy City Attorney, as counsel of record on the briefs and to coordinate with you or your authorized designee in the Reno City Attorney's Office to exchange confidential information, thoughts, strategies, and draft documents in furtherance of or necessary to the representation of the Clients. In the future, the Clinic may determine it is in the best interests of the Clients to recommend coordinating the legal representation of the Clients with the law firm of Paul, Hastings, Janofsky & Walker ("the Firm") if, as we hope, the Firm agrees to assist in the case *pro bono*. If this occurs, a separate retainer agreement for legal services will need to be processed and properly approved. Law student members of the Clinic will assist on this matter under the close supervision of Clinic attorneys. Because the Clinic is undertaking this representation *pro bono*, we will not charge you for any attorneys' fees that the Clinic incurs in this representation. The City of Reno, on behalf of all Clients, will be responsible for paying any court costs or expenses of printing, filing, and submitting briefs, which amount shall not exceed the sum of Fifteen Thousand Dollars (\$15,000) without approval of the Reno City Council, which must be obtained before exceeding the \$15,000 limitation.

The Clinic may be eligible for reimbursement from the opposing party for its attorneys' fees, expenses, or costs that it incurs in connection with this representation. To the extent that the Clinic is eligible, the Clients agree that Clinic may take steps on behalf of Clients to secure reimbursement for the Clinic for attorney's fees, costs, and other recoverable expenses. These amounts will be paid directly to the Clinic and not to Clients, except that any recovery for costs paid by the City in accordance with this letter agreement shall be reimbursed to the City.

It is an honor for the Clinic to represent you. By signing and returning this letter, the City agrees to allow the Clinic to identify the City as a Clinic client in non-commercial marketing and other promotional materials (collectively "Marketing Materials") and to describe in a general way the nature of the representation. Confirmation of non-commercial use and the Marketing Materials must receive the prior approval of both the City Manager and the Reno City Attorney or their duly authorized designees before distribution. The Clinic shall not disclose any privileged or non-public information in the Marketing Materials. The identification of the City as a client and associated Marketing Materials shall not include any literary or media rights to a portrayal or account based in substantial part on information relating to the representation as such agreement may

violate the Nevada Rules of Professional Conduct. Clients Robertson and Ashton are not providing permission to Clinic to identify them as clients in Marketing Materials. All Clients agree that the Clinic may post the briefs filed in this case and a brief description of this case on the Clinic's website once filed and a matter of public record.

Pursuant to Section 3.070 of the Reno City Charter, this letter agreement requires approval of the City Council, by six-sevenths vote, in order to be of force and effect. Additionally, pursuant to NRS 354.626, "no governing body or member thereof, officer, office, department or agency, may during any fiscal year, expend or contract to expend any money or incur any liability, or enter into any contract which by its terms involves the expenditure of money, in excess of the amounts appropriated for that function..." The continuation of this letter agreement beyond the fiscal year is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Reno City Council. If the Reno City Council for any reason, determines not to appropriate funding for this letter agreement, it shall provide immediate written notice thereof to Clinic.

This letter agreement will continue in effect according to its terms, unless terminated by the Clinic or by the Clients in writing. Any party may send to the other a written notice of termination at any time. If any party terminates this agreement, the Clinic will stop all work for you, consistent with its ethical requirements.

Finally, each Client agrees that the Clinic may withdraw from this representation if the Clients fail to cooperate with the Clinic or to use its services in a reasonable and efficient fashion. Such withdraw shall be accomplished in accordance with applicable law and rules of professional conduct.

If the arrangement described above is acceptable to you, please sign the enclosed copy of this letter and return it to my attention. If it is not, please call me as soon as possible. We are pleased to be able to represent you in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanos Bibas", with a stylized, cursive script.

Stephanos Bibas
2/12/2010
University of Pennsylvania Law School
Supreme Court Clinic

City of Reno

Robert A. Cashell, Sr., Mayor	Date
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Ryan Ashton	Date
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David Robertson	Date
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Approved as to form:

John J. Kadlic Reno City Attorney	Date
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STEPHANOS BIBAS
Professor, University of Pennsylvania Law School

RESEARCH & TEACHING All criminal law, criminal procedure, and sentencing.

EXPERIENCE

- 2006-present **UNIVERSITY OF PENNSYLVANIA LAW SCHOOL**, Philadelphia, PA.
Professor. Researching and teaching in criminal procedure.
Robert A. Gorman Award for Excellence in Teaching, 2008
- Winter/Spring 2006 **UNIVERSITY OF CHICAGO LAW SCHOOL**, Chicago, IL. Visiting
Associate Professor. Taught first-year criminal law course.
- Fall 2005 **UNIVERSITY OF PENNSYLVANIA LAW SCHOOL**, Philadelphia, PA.
Visiting Associate Professor. Taught courses in criminal procedure
- 2001-06 **UNIVERSITY OF IOWA COLLEGE OF LAW**, Iowa City, IA. Associate
Professor. Researched and taught in criminal law and criminal procedure.
- 2000-01 **YALE LAW SCHOOL**, New Haven, CT. Research fellow.
- 1998-2000 **U.S. ATTORNEY'S OFFICE, SOUTHERN DISTRICT OF NEW YORK**,
New York, NY. Assistant U.S. Attorney, Criminal Division.
Prosecuted more than 100 narcotics, art, robbery, fraud, grave robbing, and other
crimes. Interviewed witnesses and coordinated investigations.
Argued countless motions in court.
Tried three criminal cases to juries.
Briefed and argued three appeals in the U.S. Court of Appeals, Second Circuit.
FBI & New York Police Department awards for outstanding performance in
high-profile grave-robbing case that became the subject of a Bravo/BBC
documentary.
- 1997-98 **HON. ANTHONY KENNEDY**, Supreme Court of the United States,
Washington, DC. Law clerk.
- 1995-97 **COVINGTON & BURLING**, Washington, DC. Litigation associate. Litigated
white-collar criminal defense, appeals, First Amendment, employment
discrimination, toxic torts, and insurance cases.
Personally tried a pro bono employment discrimination case before a federal jury.
Briefed and argued a pro bono discrimination appeal to the U.S. Court of Appeals
for the D.C. Circuit, winning a unanimous reversal.

1994-95 **HON. PATRICK E. HIGGINBOTHAM**, U.S. Court of Appeals for the Fifth Circuit, Dallas, TX. Law clerk.

EDUCATION

1991-94 **YALE LAW SCHOOL**, New Haven, CT. J.D.
Yale Law Journal, Symposium Editor.
Moot Court: Thurman Arnold Prize (best oralist) & Stewart Prize (best team).

1989-91 **OXFORD UNIVERSITY (University College)**, England. B.A. and M.A., jurisprudence.
Gibbs Book Prize in contracts, torts, and land law.
Alan Urbach Memorial Prize in jurisprudence.
1st Place Speaker, 1991 World Debate Championships (Toronto).

1985-89 **COLUMBIA UNIVERSITY**, New York, NY. B.A., political theory.
GPA: 3.94.
Summa cum laude.
Phi Beta Kappa, early election (top 2% of the class).
Polity (Student Budgeting Committee), Financial Chair.
Parliamentary Debate: Winner of various public speaking awards.

BOOKS

ASSEMBLY-LINE CRIMINAL JUSTICE (under contract with Oxford University Press, forthcoming 2011)

ARTICLES AND OTHER SCHOLARLY WORKS

International Idealism Meets Domestic-Criminal-Procedure Realism (work in progress, coauthored with William W. Burke-White)

Prosecutorial Regulation Versus Prosecutorial Accountability, 157 U. PA. L. REV. (forthcoming 2009).

Restoration, But Also More Justice, in CRIMINAL LAW CONVERSATIONS (Paul H. Robinson, Kimberly Ferzan, & Stephen P. Garvey eds. forthcoming 2009).

Political versus Administrative Justice, in CRIMINAL LAW CONVERSATIONS (Paul H. Robinson, Kimberly Ferzan, & Stephen P. Garvey eds. forthcoming 2009).

Invasions of Conscience and Faked Apologies, in CRIMINAL LAW CONVERSATIONS (Paul H. Robinson, Kimberly Ferzan, & Stephen P. Garvey eds. forthcoming 2009).

The Heart Has Its Value: The Justifiable Persistence of the American Death Penalty, in CRIMINAL LAW CONVERSATIONS (Paul H. Robinson, Kimberly Ferzan, & Stephen P. Garvey eds. forthcoming 2009) (coauthored with Douglas A. Berman).

Rewarding Prosecutors for Performance, 6 OHIO ST. J. CRIM. L. (forthcoming 2009) (symposium essay).

Policing Politics at Sentencing, 103 NW. U. L. REV. (forthcoming spring 2009) (coauthored with Max M. Schanzenbach and Emerson H. Tiller).

Exacerbating Injustice, Response, 157 U. PA. L. REV. PENNUMBRA (forthcoming 2009), http://www.pennumbra.com/responses/___2009/Bibas.pdf.

Engaging Capital Emotions, 102 NW. U. L. REV. (forthcoming 2008), 102 NW. U. L. REV. COLLOQUY 355 (2008), <http://www.law.northwestern.edu/lawreview/colloquy/2008/17/LRCol2008n17Berman&Bibas.pdf> (coauthored with Douglas A. Berman).

Judicial Fact-Finding at Sentencing, in ENCYCLOPEDIA OF THE SUPREME COURT OF THE UNITED STATES (forthcoming Dec. 2008).

The Sixth Amendment and Criminal Sentencing, 30 CARDOZO L. REV. (forthcoming 2008) (symposium essay, coauthored with Susan R. Klein).

Rita v. United States Leaves More Open Than It Answers, 20 FED. SENTENCING REP. 28 (2007).

Forgiveness in Criminal Procedure, 4 OHIO ST. J. CRIM. L. 329 (2007).

Making Sentencing Sensible, 4 OHIO ST. J. CRIM. L. 37 (2006) (co-authored with Douglas A. Berman), *cited with approval in Cunningham v. California*, 127 S. Ct. 856, 873 (2007) (Kennedy, J., dissenting).

Transparency and Participation in Criminal Procedure, 81 NYU L. REV. 911 (2006), *cited with approval in Kansas v. Marsh*, 126 S. Ct. 2516, 2532 n.3 (2006) (Scalia, J., dissenting).

The Rehnquist Court's Fifth Amendment Incrementalism, 74 GEO. WASH. L. REV. 1078 (2006).

Brady v. Maryland: From Adversarial Gamesmanship Toward the Search for Innocence?, in CRIMINAL PROCEDURE STORIES 129 (Carol Steiker ed. 2005).

White-Collar Plea Bargaining and Sentencing After Booker, 47 WM. & MARY L. REV. 721 (2005).

Originalism and Formalism in Criminal Procedure: The Triumph of Justice Scalia, the Unlikely Friend of Criminal Defendants? 94 GEO. L.J. 183 (2005).

Regulating Local Variations in Federal Sentencing, 58 STAN. L. REV. 137 (2005).

The Blakely Earthquake Exposes the Procedure/Substance Fault Line, 17 FED. SENTENCING REP. 258 (2005).

Integrating Remorse and Apology into Criminal Procedure, 114 YALE L.J. 85 (2004) (co-authored with Richard A. Bierschbach).

Blakely's Federal Aftermath, 16 FED. SENTENCING REP. 333 (2004).

Plea Bargaining Outside the Shadow of Trial, 117 HARV. L. REV. 2463 (2004). (Professor William J. Stuntz published a response to this article at 117 HARV. L. REV. 2548 (2004).)

Pleas' Progress, 102 MICH. L. REV. 1024 (2004) (book review, reviewing GEORGE FISHER, PLEA BARGAINING'S TRIUMPH (2003)).

The Feeney Amendment and the Continuing Rise of Prosecutorial Power to Plea Bargain, 94 J. CRIM. L. & CRIMINOLOGY 295 (2004).

The Psychology of Hindsight and After-the-Fact Review of Ineffective Assistance of Counsel, 2004 UTAH L. REV. 1 (2004).

Appendi in the States: The Virtues of Federalism as a Structural Limit on Errors, 94 J. CRIM. L. & CRIMINOLOGY 1 (2003).

Bringing Moral Values into a Flawed Plea Bargaining System, 88 CORNELL L. REV. 1425 (2003).

Harmonizing Substantive-Criminal-Law Values and Criminal Procedure: The Case of Alford and Nolo Contendere Pleas, 88 CORNELL L. REV. 1361 (2003). (Professor Albert W. Alschuler published a response to this article at 88 CORNELL L. REV. 1412 (2003), and I published a reply (listed immediately above).)

Using Plea Procedures to Combat Denial and Minimization, in JUDGING IN A THERAPEUTIC KEY: THERAPEUTIC JURISPRUDENCE AND THE COURTS 169 (Bruce J. Winick & David B. Wexler eds., 2003).

The Real-World Shift in Criminal Procedure, 93 J. CRIM. L. & CRIMINOLOGY 789 (2003) (book review, reviewing RONALD J. ALLEN ET AL., COMPREHENSIVE CRIMINAL PROCEDURE (2001) and MARC L. MILLER & RONALD F. WRIGHT, CRIMINAL PROCEDURES (1999)).

The Right to Remain Silent Helps Only the Guilty, 88 IOWA L. REV. 421 (2003).

Back from the Brink, 15 FED. SENTENCING REP. 79 (2002), *excerpted in* "Back from the Brink" (op-ed essay), LEGAL TIMES, Aug. 5, 2002, at 59, and "The High Court Finds a Balance Between Judges and Juries," FULTON COUNTY DAILY REP., Aug. 13, 2002.

How Appendi Affects Institutional Allocations of Power, 87 IOWA L. REV. 465 (2002).

Appendi and the Dynamics of Guilty Pleas, 54 STAN. L. REV. 311 (2001).

Judicial Fact-Finding and Sentence Enhancements in a World of Guilty Pleas, 110 YALE L.J. 1097 (2001), *cited and discussed extensively in Blakely v. Washington*, 542 U.S. 296 (2004). (Professors Nancy J. King and Susan R. Klein published a response to this article at 54 STAN. L. REV. 295 (2001), and I published a reply (listed immediately above).)

Appendi's Perverse Effects on Guilty Pleas Under the Sentencing Guidelines, 13 FED. SENTENCING REP. 333 (Mar./Apr. 2001).

Note, *The Case Against Statutes of Limitations for Stolen Art*, 103 YALE L.J. 2437 (1994), *reprinted in* 5 INT'L J. CULTURAL PROPERTY 73 (1996).

A Contractual Approach to Data Privacy, 17 HARV. J.L. & PUB. POL'Y 591 (1994).

SHORTER WORKS

The Blakely Revolution, IOWA ADVOCATE 4 (Fall/Winter 2005).

The Future of American Sentencing: A National Roundtable on Blakely (remarks on a panel at a Stanford Law School Symposium, Oct. 9, 2004), *excerpted in* 17 FED. SENTENCING REP. 128 (2004) *and* 2 OHIO ST. J. CRIM. L. 619, 636-37 (2005).

Can the Supreme Court Clean Up Its Blakely Mess? (on-line debate with Douglas A. Berman), *Legal Affairs*, Sept. 27-Oct. 1, 2004 (available on-line at http://www.legalaffairs.org/webexclusive/debateclub_blakely1004.html)

How Long? A Close Supreme Court Decision Trades Decades of Sentencing Reform for a Confusing Future, LEGAL TIMES, July 6, 2004, at 52.

Above the Fray: Supreme Court Should Let Judges Keep a Hand in Who Gets Executed (op-ed essay), LEGAL TIMES, Feb. 4, 2002, at 43, *reprinted in* *Should There Be Apprehension over Apprendi?*, TEXAS LAWYER, Feb. 11, 2002, at 55, and *Should Jurors or Judges Decide Capital Sentences?*, FULTON COUNTY DAILY REP. Feb. 6, 2002.

Phones that Aid and Abet (letter to the editor), N.Y. TIMES, Aug. 16, 2001, at D5.

GOVERNMENT TESTIMONY

Testimony before the United States Sentencing Commission, *The Future of the Federal Sentencing Guidelines after Blakely v. Washington*, November 16, 2004 (available on-line at http://www.ussc.gov/hearings/11_16_04/Bibas.pdf)

PRESENTATIONS (selected)

"Opaque, Unresponsive Criminal Justice," faculty workshops at University of Arizona James E. Rogers College of Law and Arizona State University Sandra Day O'Connor College of Law, Phoenix and Tucson, AZ November 3 & 5, 2008

"The Long Drift from Morality Play to Assembly Line," faculty workshop at Notre Dame Law School, South Bend, Indiana October 31, 2008

"Paying Prosecutors for Performance," Ohio State Journal of Criminal Law roundtable discussion, Moritz College of Law at the Ohio State University, Columbus OH July 2, 2008

"The Sixth Amendment and Criminal Sentencing" (with Susan R. Klein), *Cardozo Law Review* symposium on the future of self-incrimination: the Fifth Amendment, confessions, and guilty pleas, Cardozo Law School, New York, NY March 3, 2008.

"Restoring Values and Relationships to Criminal Procedure," Willamette University College of Law, Salem, OR September 28, 2007

"The Gulf Between Insiders and Outsiders in Criminal Justice," Willamette Center for Law and Government, Willamette University College of Law, Salem, OR September 27, 2007

"Sentencing After *Rita*," Eighth and Tenth Circuit Judges' Conference, Vail, CO July 12, 2007

"Originalism and Formalism in Criminal Procedure: The Triumph of Justice Scalia, the Unlikely Friend of Criminal Defendants?," Arizona State, Marquette, New England, Northeastern, Northwestern, Notre Dame, Penn State, Quinnipiac, Rutgers-Camden, St. Louis, Temple, University of Arizona, University of Cincinnati, University of Chicago, University of Connecticut, University of Illinois, University of Missouri at Columbia, University of Wisconsin, Villanova, Western New England, Widener, and Willamette Law Schools and the University of Delaware, spring 2007-fall 2008.

"Forgiveness in Criminal Procedure," Colloquium on justice and mercy in Jewish and Christian tradition and American criminal law, Harvard Law School and Harvard Divinity School, Cambridge, MA May 3, 2007

"The Effects of Cognitive Biases on Plea Negotiations," Panel commentator, conference on understanding and improving dispute resolution in criminal law, Marquette Law School, Milwaukee, WI April 14, 2007

"Roundtable discussion on the future of *Miranda v. Arizona*," conference on cautions and confessions: *Miranda v. Arizona* After 40 Years, University of Colorado Law School, Boulder CO October 21, 2006

"The Rehnquist Court's Fifth Amendment Incrementalism," panel on criminal justice, *George Washington Law Review* symposium on the legacy of the Rehnquist Court, Washington, DC October 28, 2005

"Transparency and Participation in Criminal Procedure," faculty workshops, Universities of Chicago, Iowa, and Pennsylvania and Temple Law Schools, summer 2005-winter 2006

"*Roper v. Simmons*, *Booker v. United States*, and the Divergence of Capital and Non-Capital Sentencing Law," Seasongood Foundation College Visitor Series Speech, University of Cincinnati Law School, Cincinnati, OH April 20, 2005

"White-Collar Plea Bargaining and Sentencing After *Booker*," Symposium, Institute of Bill of Rights Law, William & Mary Law School, Williamsburg, VA March 25, 2005

"Plea Bargaining Outside the Shadow of Trial," faculty workshops at Universities of Chicago, Iowa, Nebraska, and Pennsylvania Law Schools, fall 2003-winter 2005

"Will Originalism and Formalism Save Criminal Procedure or Destroy It?," Duke Law School, Durham, NC (debate with Professor Sara Sun Beale) and panel, Federalist Society Faculty Conference, San Francisco, CA, January 2005.

"*Blakely v. Washington* and the Crumbling Divide Between Criminal Procedure and Substantive Law," at *The Future of American Sentencing: A National Roundtable on Blakely*, Stanford Law School, Stanford, CA October 9, 2004.

"*Blakely's* Federal Aftermath," Eighth Circuit Judicial Conference, Rapid City, SD, July 14, 2004.

"*Apprendi* Updates" Panel, Federal Bar Association & U.S. Sentencing Commission National Seminar on the Federal Sentencing Guidelines, Miami, FL, May 20, 2004.

"Integrating Remorse and Apology into Criminal Procedure," faculty workshop, University of Iowa College of Law, Iowa City, IA, February 20, 2003.

"*Apprendi* in the States: The Virtues of Federalism as a Structural Limit on Errors," Council of Appellate Staff Attorneys, Columbia, SC, July 19, 2003.

Panel, "Plea Bargaining Under the Federal Sentencing Guidelines," Federal Bar Association & U.S. Sentencing Commission National Seminar on the Federal Sentencing Guidelines, Miami Beach, FL, May 30, 2003.

Roundtable discussion, "Ineffective Assistance of Counsel," Lexis/Nexis Criminal Procedure Discussion Forum, Washington & Lee University Law School, Lexington, VA, May 17, 2003.

"Harmonizing Substantive Criminal Law Values and Criminal Procedure: The Case of *Afford* and *Nolo Contendere* Pleas," faculty workshops, Northwestern University and Universities of Iowa, Kansas, and St. Thomas (MN) Schools of Law, fall 2002

"Judicial Restrictions on Judicial Sentencing," Loyola University Chicago Law School, Chicago, IL, February 14, 2002 (two presentations).

"*Apprendi*'s Perverse Effects on Guilty Pleas Under the Federal Sentencing Guidelines," National Symposium on the Federal Sentencing Guidelines, University of Iowa, Iowa City, IA, June 2, 2001.

PROFESSIONAL ACTIVITIES AND SERVICE

Member, Philadelphia Mayor's Advisory Task Force on Ethics and Campaign Finance Reform, 2008-09

Admissions Committee, 2007-09

Academic Freedom and Responsibility Committee, 2007-11

Ad Hoc Internal Workshops Co-Convenor, 2008-09

Academic Standing Committee, 2007-08

Career Services Committee (renamed Student Services Committee), 2003-05

Academic Rules and Externships Committee, 2001-02 and 2004-05

Curriculum Policy Committee, 2004-05

Judicial Clerkship Coordinator, 2002-05

Member, Supreme Court Forecasting Project, 2002-03

BAR MEMBERSHIPS

Virginia, Virginia Supreme Court

District of Columbia, District of Columbia Court of Appeals

Supreme Court of the United States

U.S. Courts of Appeals for the Second, Fourth, and District of Columbia Circuits

U.S. District Courts for the Southern District of New York, Eastern District of Virginia,

District of Columbia, and Central District of Illinois

PERSONAL

Brown belt in Tae Kwon Do
Ethnic cuisine, cooking, and baking
Extensive solo travel in Europe, the Middle East, and the Far East
Married to Juliana Denise Bibas; son Hariton Bibas (January 2008)

21 January 2009

-8-

STAFF REPORT

To: Mayor and City Council

Agenda Item: C.7

Date: **2-24-2010**

Thru: Donna Dreska, City Manager

C.7

Subject : Staff Report: Approval of Memorandum of Understanding among the City of Reno, the City of Sparks and Washoe County regarding the Recovery Zone Facility Bond Program Intergovernmental Subcommittee

From: Maureen McKissick, Grant and Fund Development Manager.

Summary: At Council's direction, staff has continued to work toward the creation of a new intergovernmental subcommittee comprised of appointed elected officials from Washoe County and the Cities of Reno and Sparks for the implementation of Recovery Zone Facility (RZF) bonds. RZF bonds are a program of the American Recovery and Reinvestment Act of 2009 (ARRA) which makes tax-exempt financing available for privately developed taxable projects. A Memorandum of Understanding (MOU) has been developed which will authorize the new subcommittee to meet, discuss potential private project allocations, and make recommendations for approval to the relevant governing bodies. Staff recommends Council approval of the new MOU and permission for the Mayor to sign.

Previous Council Actions related to the Recovery Zone Facility Bond Program:

June 24, 2009: Council accepted a presentation and overview of the structure and highlights of the RZF and RZED bond programs.

July 15, 2009: Council accepted a presentation from Andy Artusa, Nevada State Bank, regarding the implementation of projects that could be financed with RZF and RZED bond proceeds.

August 19, 2009: Council accepted a list of public and private projects that could potentially be funded through RZF and RZED bonds.

September 9, 2009: Council accepted a revised list of public and private projects that could potentially be funded through RZF and RZED bonds and directed staff to initiate outreach to developers and private entities interested in accessing RZF bond authority for private activity projects.

September 23, 2009: Council accepted the staff report regarding potential projects that could be funded through RZF bonds and directed staff to develop a strategy for publicizing the RZF bond program to the general public

October 28, 2009: Council accepted an update on the status of staff's outreach efforts.

December 16, 2009: Council approved the concept of forming a new intergovernmental RZF subcommittee comprised of elected officials from the Cities of Reno and Sparks and Washoe County for the evaluation and recommendation of RZF allocations for private activity projects.

January 20, 2010: Council selected Mayor Robert A. Cashell, Sr., and Councilman Pierre Hascheff to represent the City of Reno on the new intergovernmental RZF subcommittee.

Background: RZF bonds offer tax-exempt rates for governmental projects and private projects that otherwise would be financed on a taxable basis. The tax-exempt rate allows issuers to realize lower debt service costs. These bonds must be used to finance depreciable property in a Recovery Zone. RZF bonds are available to municipal governments, non-profits, and private developers. In addition to the ARRA requirements, private developers and non-profits must also meet the requirements under NRS 268.530-568, the guiding Nevada law regarding conduit bonding for private activity through units of government.

Two units of local government in Washoe County received RZF bond authorization: 1) the City of Reno has been authorized to issue up to \$65,604,000, and 2) Washoe County has been authorized to issue up to \$59,648,000. The City of Sparks did not receive any authorization. The RZF bond program is available until December 31, 2010.

The first step in accessing RZED bonds is the formal designation of Recovery Zones pursuant to Section 1400U-1(b) of the ARRA. Reno City Council, by Resolution No. 7387 took this step on July 15, 2009. Based on foreclosures and unemployment rates, Council designated the entire City within its current geographic boundaries as a Recovery Zone. On September 22, 2009, based on the same findings, the Washoe County Board of Commissioners designated the entire County within its current geographic boundaries as a Recovery Zone.

Starting in the Summer of 2009, Washoe County and the City of Reno began receiving inquiries from private developers interested in accessing RZF financing for a variety of projects. Many of these projects overlapped Recovery Zone boundaries. In order to respond to the unique opportunities for job creation and economic revitalization that the projects offered, staff from Washoe County and the City of Reno proposed the formation an intergovernmental subcommittee that could handle RZF decision-making in a coordinated, regional fashion. It was proposed to include the City of Sparks in this process.

Discussion: Based on current interest levels RZF requests exceed the jurisdictions' authorizations. Because of these circumstances the City of Reno and Washoe County have agreed to create a RZFB intergovernmental subcommittee to accept, evaluate and potentially recommend private activity applications for allocation of the RZFB capacity authorized for the City of Reno and Washoe County.

On January 20, 2010 the Reno City Council appointed Mayor Cashell and Councilmember Hascheff to the subcommittee. On February 9, 2010 the Commission appointed Commissioners Jung and Breternitz to the subcommittee. The City of Sparks will address the matter at a regular meeting of the Sparks City Council on February 22, 2010. Staff in all three jurisdictions coordinate these recommendations to their governing boards so the process can move forward in a timely manner.

Accordingly, staff now seeks Council approval of the attached memorandum of understanding which describes the process to be used by the subcommittee to allocate the bonding capacity and for the issuing entities to use in the eventual issuance of the bonds

Financial Implications:

- I. Regarding conduit bonding: none for the City of Reno. The private developers who are pursuing conduit RZF bonds for qualified projects must identify the repayment source for the cost of the issuance and the bond as well as City staff time to undertake the due diligence.
- II. Regarding intergovernmental projects: none at this time.

Legal Implications:

- I. Regarding conduit bonding: The City may act as a conduit for RZF bonds under the terms and conditions of the ARRA and NRS 268.530-568, inclusive.
- II. Regarding intergovernmental projects: none at this time.

Recommendation: Staff recommends Council approval of the new MOU and permission for the Mayor to sign.

Proposed Motion: I move to approve the staff recommendation.

**MEMORANDUM OF UNDERSTANDING
BETWEEN
WASHOE COUNTY
AND THE
CITIES OF RENO AND SPARKS**

Whereas, the United States Congress approved and President Obama signed the American Recovery and Reinvestment Act (ARRA) into law in February 2009; and

Whereas, ARRA created several new bond programs through the U.S. Department of Treasury that are available to local governments including the Recovery Zone Facility Bonds which offer tax-exempt rates for use by private developers for eligible projects ; and

Whereas, Washoe County and the City of Reno have been authorized \$59,648,000 and \$65,604,000 respectively, and;

Whereas, on September 22, 2009 the Washoe County Commission designated all the area within the geographic boundaries of the County as a “Recovery Zone” pursuant to Section 1400U-1(b), and

Whereas, on July 15, 2009, the Reno City Council likewise designated all the area within the geographic boundaries of the City as a “Recovery Zone”, and

Whereas, on January 20, 2009, the Reno City Council approved the creation of an intergovernmental subcommittee to accept, evaluate and potentially recommend applications for allocation of the RZF Bond capacity and appointed two council-members to the subcommittee, and

Whereas, on January 12, 2010, the Washoe County Commission approved the creation of the intergovernmental subcommittee, and

Whereas, on February 9, 2010, the Washoe County Commission appointed two commissioners to the intergovernmental subcommittee, and

Whereas, on February 23, 2010, the Sparks City Council approved the creation of the intergovernmental subcommittee and appointed two council-members to the subcommittee, and

Now, therefore, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. Compile a comprehensive database of information obtained in response to the February 2, 2010 letter to developers issued by Washoe County and the City of Reno.
2. Each jurisdiction shall coordinate and separately notice a public meeting of the subcommittee at which time the subcommittee will accept, evaluate and potentially recommend to the Reno City Council, the Sparks City Council and/or the Washoe County Commission a prioritized ranking of the projects with a specific allocation of the bonding capacity for both Washoe County and the City of Reno. Any recommendation that

requires bonding capacity from both jurisdictions shall be recommended to both jurisdictions accordingly and both jurisdictions shall prorate any resulting filing fees and cooperate with bond counsel in any resulting requirements of bond issuance.

3. Washoe County and the City of Reno will then notify the developers of the recommended approved projects and request the filing of the application specified for Economic Development Revenue Bonds pursuant to the requirements of the State's Economic Development Bond law together with a filing fee of \$50,000 to the identified issuing jurisdiction(s).
4. Upon receipt of the completed applications and filing fees, each issuing entity will retain the appropriate consultants as needed to complete the required due diligence for the issuance of such bonds.
5. Those applications which are found to meet the requirements of local, state and federal regulations for such bonds, will then be presented to either the City of Reno and/or Washoe County. Washoe County will then submit applications for projects within the geographic boundaries of the City of Sparks to the Sparks City Council for final approval.
6. With said approvals, the entities through bond counsel will then prepare the appropriate bond resolutions and ordinances for the issuance of the bonds by either Washoe County or the City of Reno, prior to December 31, 2010.
7. As necessary, subsequent meetings of the subcommittee may be held to reconsider the approved prioritized ranking of projects due to changing circumstances.

Washoe County

City of Reno

Commission Chairman

Mayor

City of Sparks

Mayor

STAFF REPORT

To: Mayor and City Council

Agenda Item: C.8

Date: **2-24-2010**

Thru: Donna Dreska, City Manager

C.8

Subject : Staff Report: Approval of Contract with Nate Topol (Lakeridge Place), to extend the period it will voluntarily pay retroactive impact fees adopted by the City of Reno from June 30, 2010, to July 1, 2011, with respect to the Lakeridge Place project, Case No. LDC 08-00225.

From: Marilyn D. Craig, Deputy City Attorney

Previous Council Action: For some period of time the City of Reno has been considering whether to adopt impact fees pursuant to NRS Chapter 278B, "Impact Fees." During the period of consideration, certain land use applications came before City Council. Responding to the City Council's concerns, certain developers, including Nate Topol, Lakeridge Place, agreed to pay retroactive impact fees if those impact fees were adopted by June 30, 2010. The voluntary agreement was memorialized as a condition of the special use permits and variances set forth in Case No. LDC 08-00225.

During a workshop on October 7, 2009 regarding impact fees the Mayor asked whether the developers who had volunteered to pay impact fees would consider extending the period in which they would voluntarily pay impact fees. Pursuant to that inquiry, Nate Topol, Lakeridge Place, responded that it would extend the period in which it would voluntarily pay impact fees.

Discussion: A modification of conditions of special use permits and variances, where possible, requires a lengthy process, including notice and public hearing. Because Nate Topol, Lakeridge Place's agreement to extend the period in which it will pay retroactive impact fees with respect to the Lakeridge Place project is voluntary, the City Attorney's Office prepared a contract to memorialize Nate Topol, Lakeridge Place's, voluntary agreement to extend the period in which it will pay retroactive impact fees. The proposed contract is attached for City Council's review.

Recommendation: The City Attorney's Office recommends Council approval of the contract.

Proposed Motion: I move to approve the contract with Nate Topol, Lakeridge Place, with respect to an extension of the period in which it or its successors and assigns will voluntarily pay retroactive impact fees.

APN:

When Recorded mail to:

Attn: Marilyn D. Craig, Deputy City Attorney
City of Reno,
P.O. Box 1900,
Reno, Nevada 89505

VOLUNTARY IMPACT FEES PAYMENT AGREEMENT

This Voluntary Impact Fees Payment Agreement ("Agreement") is made and entered into this 9th day of FEBRUARY, 2010, by and between Nate Topol, ("Developer"), and the City of Reno, a municipal corporation existing under and by virtue of the laws of the State of Nevada ("City"). City and Developer are hereinafter referred to as the "Parties," with reference to the following facts:

WHEREAS, on or about Developer requested a tentative map to allow 269 residential and 6 office condominium units.

WHEREAS, during the review of the request, the Parties discussed the City's pending consideration of impact fees provided for under NRS Chapter 278B.

WHEREAS, on or about November 19, 2008, Developer volunteered to pay Police Concurrency impact fees for the Lakeridge Place project if the City adopted such impact fees by June 30, 2010.

WHEREAS, thereafter, the Parties memorialized Developer's agreement to pay such retroactive impact fees if adopted by June 30, 2010, as a condition on the tentative map. Condition No. 32 states: "The applicant agrees to retroactively pay a Police Concurrency impact fee on a residential unit/office square footage basis for each building permit issued prior to a Council approved fee, if an impact fee is adopted prior to June 30, 2010. After Council adoption, the fees shall be paid at the time of building permit."

WHEREAS, thereafter, the City has been actively engaged in the development and/or consideration of the adoption of impact fees. During a workshop regarding impact fees on October 7, 2009, the Mayor asked whether the developers who had volunteered to pay impact fees would consider extending the period in which it would voluntarily pay impact fees.

WHEREAS, staff thereafter contacted Todd Brabbin, the duly authorized representative for Developer, to determine if Developer would extend the period in which

it would voluntarily pay retroactive Police Concurrency impact fees. Todd Brabbin informed staff that Developer would so extend the period.

NOW, THEREFORE, in consideration of the above Recitals, which are incorporated by reference, and for good and valuable consideration, of which receipt is hereby acknowledged, Developer, for itself, its successors and assigns, declares as follows:

1. **Voluntary Payment of Impact Fees by Developer.** Developer declares that it will extend the period until July 1, 2011, in which it will agree to voluntarily pay retroactive Police Concurrency impact fees with respect to the Lakeridge Place project in accordance with Condition No. 32 as set forth in the Clerk's Letter dated May 29, 2009, regarding Case No. LDC 08-00225 (Lakeridge Place). This Agreement pertains only to Case No. LDC 08-00225.

2. **Remedies.** If there is a failure of Developer, its successors or assigns, the City may seek any and all remedies available to compel Developer to perform in accordance with this Agreement, including but not limited to, land use remedies, including but not limited to, the withholding of building permits and certificates of occupancy, contract, and other remedies until the retroactive Police Concurrency impact fees have been paid.

3. **Severability.** If any clause, sentence, or other portion of the terms, conditions, covenants and restrictions of this Agreement becomes null, or void for any reason, or be held by any court of competent jurisdiction to be so, the remaining portions will remain in full force and effect.

4. **Governing Law.** This Agreement shall be governed by, and construed according to, the laws of the State of Nevada with venue being in the Second Judicial District Court in and for the County of Washoe.

5. **Modification.** This Agreement may not be modified in any manner or rescinded except by an instrument in writing duly executed and acknowledged by both parties and properly recorded in the Official Records of Washoe County.

6. **Attorney's Fees.** In the event that any party commences any action or proceeding against the other in order to enforce the provisions hereof or in order to obtain damages for the alleged breach of any of the provisions hereof, the prevailing party as determined by a court of competent jurisdiction therein shall be entitled to recover, in addition to any amounts or relief otherwise awarded, all reasonable costs incurred in connection therewith, including reasonable attorney's fees.

7. **No Third-Party Beneficiaries.** None of the provisions of this Agreement are intended to make any person a third-party beneficiary, except as it provided in NRS Chapter 278B and any associated ordinances developed thereunder.

8. **Signatories Authorized to Sign:** The signatories to this Agreement warrant that they are authorized to sign this Agreement.

9. **Entire Agreement.** This Agreement, including the recitals, constitutes the entire agreement of the parties hereto.

IN WITNESS WHEREOF, executed this Agreement the day and year written above.

NATE TOPOL

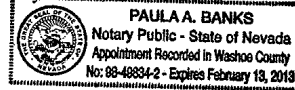
Nathan Topol
By: _____
Its: AUTHORIZED REPRESENTATIVE

ACKNOWLEDGEMENT

STATE OF NEVADA)
)ss
COUNTY OF WASHOE)

This instrument was acknowledged before me on this 12 day of February, 2010, by NATHAN L TOPOL

Paula A. Banks
Notary Public



CITY OF RENO

By: _____
Its: _____

ACKNOWLEDGEMENT – NRS 240.1665

STATE OF NEVADA)
)ss
COUNTY OF WASHOE)

This instrument was acknowledged before me on the 12 day of February, 2010, by _____, as _____, of the City of Reno, a municipal corporation.

Notary Public

STAFF REPORT

To: Mayor and City Council

Agenda Item: **G.1**

Date: **2-24-2010**

Thru: Donna Dreska, City Manager

G.1

Subject : Staff Report: Bill No.6699 Ordinance amending the boundaries of the City of Reno, Nevada, Tourism Improvement District No. 2009 (Freight House) and providing other matters properly relating thereto.

G.1.1 Staff Report: Approval of a Cooperative Agreement between the City of Reno and the State of Nevada, Department of Taxation to perform all functions incident to the administration of any money pledged pursuant to NRS 271A.070 attributable to the City of Reno, Nevada, Tourism Improvement District No. 2009 (Freight House).

From: John Hester, Community Development Director/Redevelopment Agency Administrator
Mary Ann Parrot, Finance Director

Summary: Staff presents for City Council adoption an ordinance amending the boundaries of the Freight House Tourism Improvement District (the “District”) to include the Baseball Stadium. If City Council adopts the ordinance, sales tax increment generated at the Baseball Stadium will be made available to the City to reimburse Washoe County School District (WCSD) and to other persons for the cost of acquiring, improving or equipping, or any combination thereof, any project, within the District. Staff recommends Council either approve the proposed ordinance to the Committee of the Whole, or vote to take no further action on this ordinance.

Previous Council Action: On February 10, 2010 the Council voted to refer the ordinance to the Committee of the Whole by a vote of 3-1.

On September 23, 2009, the City Council passed and adopted Ordinance No. 6126 establishing the City of Reno, Nevada Tourism District No. 2009 (Freight House) and providing matters related thereto.

Discussion: The proposed boundary adjustment does not require any additional findings, conditions, or modification of previous comments or approvals given by the Governor, the Nevada Commission on Tourism, Washoe County School District, or the Washoe County Board of Commissioners.

Before the City can adopt the attached ordinance amending the District boundaries, Council must find and determine that no retailers have maintained a fixed place of business within the Baseball Stadium on or within 120 days immediately preceding the date of the adoption of the ordinance. See, NRS 271A.080(1)(b).

In making that determination, the following materials are provided to Council for review and consideration:

1. Legal Description of Amended District
2. Map: Amended District
3. Affidavits from Nevada Land, LLC, SK Baseball LLC, SK Basketball Management LLC and Levy Premium Food Service representing that no retailers will have maintained or will be maintaining a fixed place of business at the Baseball Stadium on or within 120 days immediately preceding the date of the adoption of the ordinance.
4. Legal Opinion of Counsel to Nevada Land LLC opining that no retailers will have maintained or will be maintaining a fixed place of business at the Baseball Stadium on or within 120 days immediately preceding the date of the adoption of the ordinance.
5. Legal Opinion of Attorney General of the State of Nevada dated September 18, 2009, opining and confirming that amending the District to include additional property located within the boundaries of a redevelopment area does not violate NRS 271A.070(4).
6. Ordinance amending the boundaries of the City of Reno, Nevada, Tourism Improvement District No. 2009 (Freight House) and providing other matters properly relating thereto.

Financial Implications: Amending the boundaries of the District has no immediate financial implication. One hundred percent (100%) of the base sales tax generated within the District is distributed pursuant to the standard sales tax distribution formula.

If the City enters into a reimbursement agreement or issues bonds for the cost of acquiring, improving or equipping, or any combination thereof, any project, within the District, then 75% of the base sales tax generated within the District is pledged to repayment of the bonds or reimbursement agreement. The remaining 25% of the base sales tax generated within the District is distributed pursuant to the standard sales tax distribution formula.

Legal Implications: Amending the District to include the Baseball Stadium does not legally obligate the City to enter into a reimbursement agreement, issue bonds or provide funds to the WCSD, or to any other persons for the cost of acquiring, improving or equipping, or any combination thereof, any project, within the District.

Recommendation: Staff presents the attached ordinance and support materials for City Council consideration, and recommends Council pursue one of two options:

a.) Council adoption of Bill No. _____ .

Or

b.) Council vote to not move further on this proposed ordinance.

Proposed Motion:

a.) I move to adopt Bill No._____.

Or

b.) I move to not move further on this ordinance.

Attachments:

1. Legal Description of Amended District
2. Map: Amended District
3. Affidavits of Nevada Land, LLC, SK Baseball LLC, SK Basketball Management LLC and Levy Premium Food Service
4. Legal Opinion of Counsel to Nevada Land LLC
5. Legal Opinion of Attorney General of the State of Nevada
6. Ordinance amending the boundaries of the City of Reno, Nevada, Tourism Improvement District No. 2009 (Freight House) and providing other matters properly relating thereto

1. LEGAL DESCRIPTION OF ADDITIONAL AREA TO BE ADDED TO DISTRICT
AMENDED FREIGHT HOUSE TOURIST IMPROVEMENT DISTRICT BOUNDARIES

The boundaries of the Freight House 271A Tourist Improvement District (“Freight House District”) are shown on the attached two maps created by the University of Nevada, Reno Center for Regional Studies (together, the “Freight House District Maps”). The following more particularly describes the Freight House District boundaries, but shall not in anyway be construed to limit or remove the properties as shown on the Freight House District Maps:

1. The following Washoe County Assessor Parcel Numbers as of September 3, 2009: 011-450-20, 011-450-17, 011-450-16, 011-450-19, 011-450-01, 012-013-01, 012-440-08, 011-078-04, 011-078-02, 011-078-06, 011-078-05, 011-078-07, 011-072-01, 011-072-02, 011-074-03, 011-074-10, 011-074-09, 011-074-08, 011-074-07, 011-074-21, 011-074-11, 011-074-12, 011-074-13, 011-074-14, 011-074-15, 007-313-12, 007-313-13, 007-313-15, 007-313-09, 007-313-08, 007-313-06, 007-313-05, 007-311-19, 011-380-05, 011-380-04, 011-380-03, 011-380-29 [excluding the 8,397 square feet of existing retail on the first floor (also known as the Bully’s Bar & Grill) and the 28,780 square feet of existing retail on the fourth floor (2,816 sq. ft. for the SportsService Concession, 10,824 sq. ft. for the Lane 81 Pro Shop and a miscellaneous 750 sq. ft.)], 011-380-25, 011-380-01, 011-380-23, 011-380-34, 011-380-33, 007-296-22, 007-295-04, 007-295-05, 007-295-10, and 007-315-04 (the “Downtown Parcels”).
2. The following Washoe County Assessor Parcel Numbers for certain Washoe County School District properties as of September 3, 2009: 012-319-23, 019-303-41, 019-011-20, 013-042-01, 013-333-30, 021-202-01, 015-271-05, 015-271-01, 011-317-01, 025-521-01, 025-522-05, 013-251-01, 012-401-14, 011-017-12, 013-237-01, 021-317-01 and 013-343-04 (the “WCSD Parcels”).
3. In the event there are any discrepancies or conflicts with the Downtown Parcels and WCSD Parcels and the Freight House Maps, the Freight House District Maps shall control.
4. All real property identified as “Freight House TID” on the Freight House District Maps including, but not limited to, Evans Avenue between Second and Fourth Streets and any and all public and private roads, streets, right-of-ways, alleys and easements.
5. Any public roads, streets and right-of-ways, whether or not identified on the Freight House District Maps, that would be required to contiguously connect the Downtown Parcels and WCSD Parcels, in the event it is determined that the Freight House District must be contiguous.
6. All air rights of the Downtown Parcels and WCSD Parcels.

Improvements built within the Freight House District that legally encroach onto any property located outside the Freight House District.

**3. AFFIDAVITS OF NEVADA LAND, LLC, SK BASEBALL LLC, SK BASKETBALL
MANAGEMENT LLC AND LEVY PREMIUM FOOD SERVICE**

CERTIFICATE OF MANAGER

OF

NEVADA LAND LLC

The undersigned, being the sole manager of Nevada Land LLC, a Delaware limited liability company (the “Company”) does certify that the following statement is true and correct:

- 1 From the date the Stadium Property was acquired by the Company to October 22, 2009, the only “retailers” (as defined under NRS 374.060) having a fixed place of business on the Stadium Parcel, APN 011-450-20, were the following companies: SK Baseball LLC, SK Basketball Management LLC and Levy Premium Foodservice Limited Partnership.

Dated this ____ day of January 28, 2010.

Stuart Katzoff, Manager

STATE OF _____)
)
COUNTY OF _____) AFFIDAVIT OF NEVADA LAND, LLC

**IN CONNECTION WITH AMENDMENT OF THE BOUNDARIES OF
CITY OF RENO, NEVADA, TOURISM IMPROVEMENT DISTRICT NO. 2009
(FREIGHT HOUSE)**

The undersigned affiant hereby affirms and states that:

1. Nevada Land, LLC is the owner of certain real property identified as Washoe County Assessor's Parcel No. _____ and located at 250 Evans Avenue, Reno, Nevada (the "Property").

2. On and after October 23, 2009 to the date hereof, Nevada Land, LLC was not, is not and will not be a retailer maintaining a fixed place of business within the boundaries set forth in Exhibit A attached hereto on or within 120 days of February 26, 2010.

3. On and after October 23, 2009 to the date hereof, Nevada Land, LLC has not leased or permitted and will not lease or permit any retailer to maintain a fixed place of business on the Property on or within 120 days of February 26, 2010.

The affiant acknowledges and agrees that the statements made herein shall be used and relied upon by the City Council of the City of Reno, Nevada, in making the determination in NRS 271A.080(1)(b), if any, with respect to amending the boundaries of the City of Reno, Nevada, Tourism Improvement District No. 2009 (Freight House).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

DATED this _____ day of _____, 2010 at _____.

Name: _____

STATE OF _____)
) SS.
COUNTY OF _____)

This instrument was acknowledged before me on _____
by _____ as _____ of NEVADA LAND, LLC.

(Signature) (NOTARIAL STAMP)

67

STATE OF _____)
)
COUNTY OF _____) AFFIDAVIT OF SK BASEBALL LLC

**IN CONNECTION WITH AMENDMENT OF THE BOUNDARIES OF
CITY OF RENO, NEVADA, TOURISM IMPROVEMENT DISTRICT NO. 2009
(FREIGHT HOUSE)**

The undersigned affiant hereby affirms and states that on and after October 23, 2009 to the date hereof, SK Baseball LLC was not, is not and will not be a retailer maintaining a fixed place of business within the boundaries set forth in Exhibit A attached hereto on or within 120 days of February 26, 2010.

The affiant acknowledges and agrees that the statements made herein shall be used and relied upon by the City Council of the City of Reno, Nevada, in making the determination in NRS 271A.080(1)(b), if any, with respect to amending the boundaries of the City of Reno, Nevada, Tourism Improvement District No. 2009 (Freight House).

The affiant is authorized and empowered to execute this affidavit.

DATED this _____ day of _____, 2010 at _____.

SK BASEBALL LLC

Name:

STATE OF _____)
) SS.
COUNTY OF _____)

This instrument was acknowledged before me on _____
by _____ as _____ of SK BASEBALL LLC.

(Signature) (NOTARIAL STAMP)

EXHIBIT A

(Attach boundaries)

STATE OF _____)
) AFFIDAVIT OF
) SK BASKETBALL MANAGEMENT LLC
COUNTY OF _____)

**IN CONNECTION WITH AMENDMENT OF THE BOUNDARIES OF
CITY OF RENO, NEVADA, TOURISM IMPROVEMENT DISTRICT NO. 2009
(FREIGHT HOUSE)**

The undersigned affiant hereby affirms and states that on and after October 23, 2009 to the date hereof, SK Basketball Management LLC was not, is not and will not be a retailer maintaining a fixed place of business within the boundaries set forth in Exhibit A attached hereto on or within 120 days of February 26, 2010.

The affiant acknowledges and agrees that the statements made herein shall be used and relied upon by the City Council of the City of Reno, Nevada, in making the determination in NRS 271A.080(1)(b), if any, with respect to amending the boundaries of the City of Reno, Nevada, Tourism Improvement District No. 2009 (Freight House).

The affiant is authorized and empowered to execute this affidavit.

DATED this _____ day of _____, 2010 at _____.

SK BASKETBALL MANAGEMENT LLC

Name:

STATE OF _____)
) SS.
COUNTY OF _____)

This instrument was acknowledged before me on _____ by
_____ as _____ of SK BASKETBALL MANAGEMENT
LLC.

(NOTARIAL STAMP)

(Signature)

EXHIBIT A

(Attach boundaries)

STATE OF _____)
COUNTY OF _____) AFFIDAVIT OF
LEVY PREMIUM FOOD SERVICE

**IN CONNECTION WITH AMENDMENT OF THE BOUNDARIES OF
CITY OF RENO, NEVADA, TOURISM IMPROVEMENT DISTRICT NO. 2009
(FREIGHT HOUSE)**

The undersigned affiant hereby affirms and states that on and after October 23, 2009 to the date hereof, Levy Premium Food Service was not, is not and will not be a retailer maintaining a fixed place of business within the boundaries set forth in Exhibit A attached hereto on or within 120 days of February 26, 2010.

The affiant acknowledges and agrees that the statements made herein shall be used and relied upon by the City Council of the City of Reno, Nevada, in making the determination in NRS 271A.080(1)(b), if any, with respect to amending the boundaries of the City of Reno, Nevada, Tourism Improvement District No. 2009 (Freight House).

The affiant is authorized and empowered to execute this affidavit.

DATED this _____ day of _____, 2010 at _____.

LEVY PREMIUM FOOD SERVICE

Name:

STATE OF _____)
COUNTY OF _____) SS.

This instrument was acknowledged before me on _____
by _____ as _____ of LEVY PREMIUM FOOD
SERVICE.

(Signature) (NOTARIAL STAMP)

EXHIBIT A
(Attach boundaries)

4. LEGAL OPINION OF COUNSEL TO NEVADA LAND LLC

(To be provided – on file at the Clerk’s Office)

5. LEGAL OPINION OF ATTORNEY GENERAL OF THE STATE OF NEVADA



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

JIM SPENCER
Chief of Staff

September 18, 2009

John J. Kadlic, City Attorney
City of Reno
P.O. Box 1900
Reno, Nevada 89505-1900

Dear Mr. Kadlic:

In your July 16, 2009 letter, you have requested that the Office of the Attorney General (Office) opine as to whether a lawfully created tourism improvement district located within an existing redevelopment area can be amended after October 1, 2009, to include within its boundaries additional property within a redevelopment area without violating the limitation contained in NRS 271A.070(4).

QUESTION ONE

After October 1, 2009, may the City of Reno amend the boundaries of a tourism improvement district (TID) located in an existing redevelopment area that is lawfully created prior to October 1, 2009, to include additional properties within the boundaries of a development area?

ANALYSIS

As you stated in your letter, the language in NRS 271A.070(4) is plain and unambiguous. "The governing body of a municipality shall not, after October 1, 2009, create a tourism improvement district that includes within its boundaries any property included within the boundaries of a redevelopment area established pursuant to chapter 279 of NRS." NRS 271A.070(4). Thus, pursuant to NRS 271A.070(4), a municipality may not *create* a TID that includes within its boundaries any property included within the boundaries of a properly established redevelopment area. The statute does not preclude or address the permissibility of *amending* a TID after October 1, 2009.

John J. Kadlic, City Attorney
September 18, 2009
Page 2

"When 'the words of a statute have a definite and ordinary meaning'," it is not appropriate to "look beyond the plain language of the statute unless it is clear that this meaning was not intended." *Harris Associates v. Clark County Sch. Dist.*, 119 Nev. 638, 641-42, 81 P.3d 532, 534 (2003). Here, the words of the statute have definite, ordinary meaning. Thus, NRS 271A.070(4) does not preclude the amendment of a TID after October 1, 2009 to include redevelopment area.

Furthermore, as you stated in your letter, NRS 271A.080(1) makes it clear that amending and creating TIDs are different legal actions, and both may be done by ordinance. Specifically, while a municipality may create a TID, it may also amend a TID to add "any additional area." NRS 271A.080(1). The plain language of NRS 271A.080 indicates that there is a difference between creating and amending a TID. Moreover, adding additional area is not limited by the type of area, such as whether the area is classified as redevelopment or not. Consequently, the ordinance may amend the TID to add whatever area the governing body finds appropriate. NRS 271A.080(1)(b)

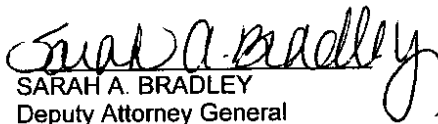
CONCLUSION TO QUESTION ONE

Because NRS 271A.070(4) does not limit amendments to TIDs after October 1, 2009 and the legislative scheme indicates that amending and creating TIDs are two different acts, the City of Reno may amend the boundaries of a tourism improvement district (TID) located in an existing redevelopment area that is lawfully created prior to October 1, 2009, to include additional properties within the boundaries of a development area after October 1, 2009.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:


SARAH A. BRADLEY
Deputy Attorney General
Business and Licensing
(775) 684-1213

SAB:DBN

7. ORDINANCE AMENDING THE BOUNDARIES OF THE CITY OF RENO, NEVADA, TOURISM IMPROVEMENT DISTRICT NO. 2009 (FREIGHT HOUSE) AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO

Summary — An ordinance amending the boundaries of the City of Reno, Nevada Tourism Improvement District No. 2009 (Freight House) and providing other matters related thereto.

BILL NO. _____

ORDINANCE NO. ____

(of the City of Reno, Nevada)

AN ORDINANCE AMENDING THE BOUNDARIES OF THE CITY OF RENO, NEVADA, TOURISM IMPROVEMENT DISTRICT NO. 2009 (FREIGHT HOUSE); AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO.

WHEREAS, the City of Reno, Nevada (the “City”) has entered into Memorandum of Understanding (the “MOU”) dated July 16, 2008 by and among the City, Nevada Land II LLC., a Nevada corporation (“Nevada Land”), and the Redevelopment Agency of the City of Reno, Nevada; and

WHEREAS, under Nevada Revised Statutes Chapter 271A, Tourism Improvement District Law (the “Tourism Act”), the City has the power to create a tourism improvement district (the “District”) for the development of property within the jurisdiction of the City; and

WHEREAS, the Tourism Act requires, among other things, that before the District may be created, the City Council (the “Council”) shall make a written finding at a public hearing, based upon reports from independent consultants, as to whether the Project and the financing thereof will have a positive fiscal effect on the provision of local governmental services (the “Fiscal Effect Finding”), after considering:

(a) the amount of proceeds of all taxes and other governmental revenue projected to be received as a result of the properties and businesses expected to be located in the District;

(b) the use of any money proposed to be pledged pursuant to the Tourism Act;

(c) any increase in costs for the provision of local governmental services, including, without limitation, services for education, including operational and capital costs, and services for police protection and fire protection, as a result of the project and the development of land within the District; and

(d) estimates of any increases in the proceeds from sales and use taxes collected by retailers located outside of the District and of any displacement of the proceeds from sales and

use taxes collected by those retailers, as a result of the properties and businesses expected to be located in the District; and

WHEREAS, the City commissioned the Fiscal Impact and Economic Impact Analyses prepared by Meridian Business Advisors (the “Report”) regarding, among other things, the fiscal effect on the provision of local governmental services and the estimated amount and source of sales and use taxes generated in the District; and

WHEREAS, the Report included within the District the AAA baseball stadium, team store and related facilities (the “Stadium Properties”) and a portion of the National Bowling Stadium; and,

WHEREAS, the Report also contained a modification that excluded from the District the Stadium Properties and a portion of the National Bowling Stadium; and,

WHEREAS, the Report is the only analysis prepared by or for or presented to the Council regarding the fiscal effect of the Project and the use of any money proposed to be pledged pursuant to the Tourism Act on the provision of local governmental services, including education; and

WHEREAS, pursuant to the Tourism Act, at least 45 days before making the Fiscal Effect Finding, the Council provided to the Board of Trustees (the “WCSD Board”) of the Washoe County School District (“WCSD”) and the Board of County Commissioners of Washoe County (the “County BCC”), written notice of the time and place of the meeting at which the Council will consider making the Fiscal Effect Finding and the Report prepared by or for or presented to the Council regarding the fiscal effect of the project to be financed in the District (the “Project”), including both scenarios described above, and the use of any money proposed to be pledged pursuant to the Tourism Act on the provision of local governmental services, including education; and

WHEREAS, the City provided at least 15 days’ notice of a public hearing held on July 1 as continued to July 15, 2009 by publication pursuant to NRS 271A.080(6); and

WHEREAS, the Council held a public hearing on July 1, 2009 as continued to July 15, 2009 and pursuant to a resolution adopted on July 15, 2009 at the public hearing, the Council made written findings pursuant to NRS 271A.080(2), (3) and NRS 271A.080(6), including the Fiscal Effect Finding; and

WHEREAS, the City provided materials to the Nevada Commission on Tourism and the Governor of the State of Nevada pursuant to NRS 271A.080(7) and (8), respectively; and

WHEREAS, pursuant to a resolution adopted on August 25, 2009, the Nevada Commission on Tourism made the determination pursuant to NRS 271A.080(7) with respect to the Project and the District, including the scenario in which the Stadium Properties and a portion of the National Bowling Stadium are included in the District; and

WHEREAS, prior to the date hereof, the Governor of the State of Nevada made the determination with respect to the Project pursuant to NRS 271A.080(8), including the scenario in

which the Stadium Properties and a portion of the National Bowling Stadium are included in the District; and

WHEREAS, the City adopted an ordinance creating the “City of Reno, Nevada Tourism Improvement District No. 2009 (Freight House)” on September 23, 2009 which excluded the scenario in which the Stadium Properties and a portion of the National Bowling Stadium are included in the District; and

WHEREAS, the City desires to amend the boundaries of the District to include the area designated in Appendix A attached hereto and made a part hereof (the “Additional Area”), which includes the Stadium Properties and the amended boundaries of the District in its entirety are attached hereto as Appendix B and made a part hereof; and

WHEREAS, having met all of the prerequisites to amendment of the boundaries of the District pursuant to NRS 271A.080, the Council desires to amend the boundaries of the District; and

WHEREAS, the City staff has presented to the Council and attached hereto as Appendix A and made a part hereof, a legal description of the amended boundaries of the District and a map showing the amended boundaries of the District; and

WHEREAS, the Council has reviewed the documents submitted for the amendment to the boundaries of the District; and

WHEREAS, no portion of any of the Property in the District is also included within any boundaries of any other tourism improvement district or any improvement district for which any money has been pledged pursuant to NRS 271.650; and

WHEREAS, the Council and officers of the City have done all things necessary and preliminary to the creation of the District, including, without limitation, a map and legal description of the amended boundaries of the District, and the Council desires now to amend the boundaries of the District by this ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RENO DO ORDAIN:

Section 1. This Ordinance shall be known as, and may be cited by, the short title “Tourism Improvement District No. 2009 (Freight House) Amendment Ordinance” (herein the “Ordinance”). All actions, proceedings, matters and things heretofore taken, had and done by the City and the officers of the City (not inconsistent with the provisions of this Ordinance) concerning the District and the Project hereby is, ratified, approved and confirmed.

Section 2. Based on the affidavits of Nevada Land, LLC, SK Baseball LLC, SK Baseball Management LLC and Levy Premium Food Service attached hereto as Appendix C, the opinion of counsel to Nevada Land, LLC attached hereto as Appendix D and the opinion of the Office of the Attorney General of the State of Nevada dated September 18, 2009 attached hereto as Appendix E, the Council has heretofore determined and does hereby determine:

a. No retailers will have maintained or will be maintaining a fixed place of business within the Additional Area on or within 120 days immediately preceding the date of adoption of this Ordinance; and

b. The Additional Area is located entirely within the boundaries of the City.

Section 3. The amended boundaries of the District are described on Appendix B attached hereto and made a part hereof.

Section 6. Pursuant to NRS 271A.090, the determinations and written findings made by the Council in this Ordinance are conclusive in the absence of fraud or gross abuse of discretion.

Section 10. When first proposed, this Ordinance shall be read to the Council by title and referred to the committee of the whole, after which an adequate number of copies of this Ordinance shall be filed with the City Clerk for public distribution. Notice of the filing shall be published once in the Reno Gazette-Journal, a newspaper published and having general circulation in the City, at least 10 days before the adoption of this Ordinance, such publication to be in substantially the following form:

(FORM OF PUBLICATION OF NOTICE OF FILING OF AN ORDINANCE)

BILL NO. _____
ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE BOUNDARIES OF
THE CITY OF RENO, NEVADA, TOURISM
IMPROVEMENT DISTRICT NO. 2009 (FREIGHT HOUSE);
AND PROVIDING OTHER MATTERS PROPERLY
RELATING THERETO.**

PUBLIC NOTICE IS HEREBY GIVEN, and that an adequate number of typewritten copies of the above-numbered and entitled proposed Ordinance have been filed and are available for public inspection and distribution at the office of the City Clerk of the City of Reno, at her office in City Hall, One East First Street, 2nd Floor, Reno, Nevada, and that such Ordinance was proposed on February 10, 2010, and will be considered for adoption at a regular meeting of the City Council of the City of Reno held on February 24, 2010.

/s/ Lynnette Jones
City Clerk

(End of Form of Publication of Notice of Filing of An Ordinance)

Section 11. This Ordinance shall be in effect on the date of publication as hereinafter provided. After this Ordinance is adopted and signed by the Mayor and attested and sealed by the Clerk, this Ordinance shall be published once by its title only, together with the names of the Council members voting for or against its passage, such publication to be made in the Reno Gazette-Journal, a newspaper published and having a general circulation in the City, such publication to be in substantially the following form:

(FORM OF PUBLICATION OF ADOPTION OF ORDINANCE)

ORDINANCE NO. _____
(of the City of Reno, Nevada)

**AN ORDINANCE AMENDING THE BOUNDARIES OF
THE CITY OF RENO, NEVADA, TOURISM
IMPROVEMENT DISTRICT NO. 2009 (FREIGHT HOUSE);
AND PROVIDING OTHER MATTERS PROPERLY
RELATING THERETO.**

PUBLIC NOTICE IS HEREBY GIVEN that the above-numbered and entitled Ordinance was proposed by Council member _____ on February 10, 2010, and that such Ordinance was passed at a regular meeting of the City Council on February 24, 2010, by the following vote of the City Council:

Those Voting Aye:

Those Voting Nay:

Those Absent:

This Ordinance shall be in full force and effect from and after the ____th day of _____, 2009, i.e., the day after the publication of such Ordinance by its title only.

IN WITNESS WHEREOF, the City Council of the City of Reno, Nevada has caused this Ordinance to be published by title only.

DATED this _____, 2009.

/s/ Robert A. Cashell, Sr.
Mayor

Attest:

/s/ Lynnette Jones
City Clerk

(End of Form of Publication)

Section 12. All ordinances or resolutions, or parts thereof, in conflict with the provisions of this Ordinance, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

Section 13. If any section, paragraph, clause or other provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or other provision shall not affect any of the remaining provisions of this Ordinance.

PASSED, ADOPTED AND APPROVED THIS FEBRUARY 24, 2010.

Robert A. Cashell, Sr., Mayor

(SEAL)

Attest:

Lynnette Jones, City Clerk

APPENDIX A

(Attach legal description of additional area to be added to the boundaries of the District)

APPENDIX B

(Attach legal description of amended boundaries of the District)

APPENDIX C

(Attach affidavits of Nevada Land, LLC, SK Baseball LLC,
SK Baseball Management LLC and Levy Premium Food Service)

APPENDIX D

(Attach opinion of counsel to Nevada Land, LLC)

APPENDIX E

(Attach opinion of the Office of the Attorney General
of the State of Nevada dated September 18, 2009)

STATE OF NEVADA)

) ss.

CITY OF RENO)

I, Lynnette Jones, am the duly chosen and qualified City Clerk of the City of Reno (herein “City”), Nevada, and in the performance of my duties as Clerk do hereby certify:

a. The foregoing pages constitute a true, correct and compared copy of an ordinance introduced at meeting of the City Council held on February 10, 2010 and the notice of filing of the proposed ordinance was published in a newspaper of general circulation in the City (an affidavit evidencing such publication is attached hereto as Exhibit C). The ordinance was referred to a committee, the committee reported the ordinance back to the City Council, and the ordinance was passed and adopted by the Council at a meeting held on February 24, 2010. The original of such ordinance has been approved and authenticated by the signature of the Mayor of the Council and myself as Clerk, published by title (an affidavit evidencing such publication is attached hereto as Exhibit D), and has been recorded in the minute book of the Council kept for that purpose in my office, which record has been duly signed by such officers and properly sealed.

b. The members of the City Council were present at the meeting on February 10, 2010 and voted on the referral of the ordinance as follows:

Those Voting Aye:

Robert A. Cashell, Sr.
Dave Aiazzi
Dwight Dortch
Dan Gustin
Pierre Hascheff
Jessica Sferrazza
Sharon Zadra

Those Voting Nay:

Those Abstaining:

Those Absent:

c. The members of the City Council were present at the meeting on February 24, 2010, and voted on the passage of the ordinance as follows:

Those Voting Aye:

Robert A. Cashell, Sr.
Dave Aiazzi
Dwight Dortch
Dan Gustin
Pierre Hascheff
Jessica Sferrazza
Sharon Zadra

Those Voting Nay:

Those Abstaining:

Those Absent:

The undersigned representative of the City Manager's Office does hereby certify:

a. All members of the Council were given due and proper notice of the meetings held on February 10, 2010 and February 24, 2010.

b. Public notice of such meeting was given and such meeting was held and conducted in full compliance with the provisions of NRS § 241.020. A copy of the notice of meetings (attached hereto as Exhibit A) containing the time, place, location and an excerpt from the agendas for the meetings relating to the ordinance, as posted at least 3 working days in advance of the meetings at the Council's office, on the City's website and at:

- (i) Washoe County Courthouse
75 Court Street
Reno, Nevada
- (ii) Washoe County Library
301 South Center Street
Reno, Nevada
- (iii) Downtown Post Office
50 South Virginia Street
Reno, Nevada
- (iv) Reno City Hall
One East First Street
Reno, Nevada

c. Prior to 9:00 a.m. at least 3 working days before such meeting, such notice was mailed to each person, if any, who has requested notices of meetings of the Council in compliance with NRS 241.020(3)(b) by United States Mail, or if feasible and agreed to by the requestor, by electronic mail.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City
this February 24, 2010.

(SEAL)

City Clerk

IN WITNESS WHEREOF, I have hereunto set my hand this _____,
2010.

Representative City Manager's Office

EXHIBIT A

(Attach Copy of Notice of Meeting on February 10, 2010)

EXHIBIT B

(Attach Copy of Notice of February 24, 2010 Meeting)

EXHIBIT C

(Attach Affidavit of Publication of Notice of Filing of Creation Ordinance)

EXHIBIT D

(Attach Affidavit of Publication of Adoption of Creation Ordinance)

STAFF REPORT

Approval of a Cooperative Agreement between the City of Reno and the State of Nevada, Department of Taxation to perform all functions incident to the administration of any money pledged pursuant to NRS 271A.070 attributable to the City of Reno, Nevada, Tourism Improvement District No. 2009 (Freight House).

Summary: Once an ordinance creating a tourism improvement district has been adopted, NRS 271A.100 requires that the governing body of the municipality and the Department of Taxation enter into an agreement specifying the dates and procedure for distribution to the municipality of any money pledged pursuant to NRS 271A.070. Attached for City Council review and approval is the proposed City of Reno, Nevada Tourism Improvement District No. 2009 (Freight House) Cooperative Agreement between the City and the Department of Taxation (the “Agreement”). Staff recommends approval of the Agreement.

Previous Council Action: On September 23, 2009, the City Council adopted Ordinance No. 6126 establishing the City of Reno, Nevada Tourism Improvement District No. 2009 (Freight House) and providing matters related thereto.

Discussion: The key terms of the Agreement are as follows:

1. The Department shall administer and enforce all provisions of the Ordinance No. 6126 establishing the City of Reno, Nevada Tourism Improvement District No. 2009 (Freight House) (the “Ordinance”) pertaining to the collection of all Taxes provided for in said Ordinance.
2. The City agrees to notify the Department, substantially in the form of Exhibit A, (i) of each business that is located within and collects Taxes generated within the District; and (ii) that such Taxes shall be administered in accordance with this Agreement. The City also agrees to notify the Department any time a business closes within the District.
3. The Department shall distribute to the City, on a monthly basis, the Taxes described in this Agreement. With each distribution, the Department shall provide the City Finance Director with a monthly statement setting forth the amount collected and any collection costs deducted by the Department. Distribution shall cease at the end of the fiscal year in which the 20th anniversary of the adoption of the ordinance creating the District occurs, i.e., June 30, 2030.

Financial Implications: None.

Legal Implications: The Agreement specifies the dates and procedure for distribution to the City of any money pledged relating to the City of Reno, Nevada Tourism Improvement District No. 2009 (Freight House). Entering into the Agreement with the Department of Taxation does not legally obligate the City to issue bonds or provide reimbursement to WCSD, the Developer

or any other persons for the cost of acquiring, improving, equipping, operating or maintaining any project within the District.

Recommendation: Staff recommends City Council approve the Agreement and authorize the Mayor to sign on the City's behalf.

Proposed Motion: I move to approve the staff recommendation.

**CITY OF RENO, NEVADA
TOURISM IMPROVEMENT DISTRICT NO. 2009 (FREIGHT HOUSE)
COOPERATIVE AGREEMENT**

THIS AGREEMENT is made and entered into this 24th day of February, 2010, by and between the City of Reno, a municipal corporation of the State of Nevada, the "City," and the State of Nevada Department of Taxation, the "Department," collectively the "Parties."

RECITALS

WHEREAS, the City, through its City Council, and consistent with NRS 271A.070 as enacted by Ordinance No. 6126 establishing the City of Reno, Nevada Tourism Improvement District No. 2009 (Freight House) (the "Ordinance") has created a tourism improvement district (the "District") and pledged 75% of the taxes described therein as permitted by Chapter 271A of NRS (the "Taxes") for the purposes of carrying out the acquisition, improvement, equipment, operation and maintenance of the Project within the District as more specifically described in the Ordinance, and the financing of the Project; and

WHEREAS, NRS 271A.100 further provides that any such ordinance must include a provision requiring the City to enter into a contract with the Department to perform all functions incident to the administration or operation of the tax in the City, and the Parties intend that this Agreement serve as the required contract; and

WHEREAS, the City has adopted the Ordinance creating the tourism improvement district effective September 25, 2009.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the City and the Department agree as follows:

1. The Department shall administer and enforce all provisions of the Ordinance pertaining to the collection of all Taxes provided for in said Ordinance.

2. The City shall notify the Department, substantially in the form attached hereto as Exhibit A, (i) of each business that is located within and collects Taxes generated within the District; and (ii) that such Taxes shall be administered in accordance with this Agreement. The City shall further notify the Department any time such a business closes.

3. The City shall reimburse the Department for the costs of collecting the Taxes. The amount of collection costs to be reimbursed by the City hereunder shall be computed in the manner provided by NRS 271A.070 (1)(c), (1) and (2). Before distributing any revenue to the City pursuant to paragraph 4 below, the Department shall deduct said collection costs from the amount to be distributed.

4. Subject to paragraph 3, above, the Department shall distribute to the City, on a monthly basis, the Taxes described in this Agreement. With each distribution, the Department

shall provide the City Finance Director with a monthly statement setting forth the amount collected and any collection costs deducted by the Department. Distribution shall cease at the end of the fiscal year in which the 20th anniversary of the adoption of the ordinance creating the District occurs, i.e., June 30, 2030.

5. The City agrees that the Department shall have the power to make all necessary rules and regulations and prescribe all necessary forms or other requirements for the purpose of making the administration of the Ordinance effective.

6. The Department shall have all the powers, duties, and responsibilities as provided by the Ordinance and Chapter 374 of the Nevada Revised Statutes and all amendments thereto, and all other State laws pertaining to the collection of sales and use taxes.

7. If any term or provision of this Agreement is deemed to be invalid or unenforceable to any extent, the remainder of this Agreement will not be affected thereby, and each remaining term and provision of this Agreement will be valid and be enforced to the fullest extent permitted by law.

8. No waiver of any breach of any covenant or provision contained herein will be deemed a waiver of any preceding or succeeding breach thereof or of any other covenant or provision contained herein. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act except those of the waiving party, which will be extended by a period of time equal to the period of the delay.

9. This Agreement is binding upon and inures to the benefit of the permitted successors and assigns of the parties hereto. None of these parties shall assign any of the rights or delegate any of the duties of this Agreement without the express written consent of the other party.

10. Except as otherwise expressly provided, this Agreement (including all Exhibits attached hereto) constitutes the entire contract between the Parties hereto and may not be modified except by an instrument in writing signed by the party to be charged.

11. The Parties hereto expressly agree that this Agreement will be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Nevada.

[Remainder of Page Intentionally Left Blank. Signature Page Follows.]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed on its behalf by and authorized representative.

THE CITY OF RENO

Dated this ____ day of _____, 2010.

By: _____
Robert A. Cashell, Sr., Mayor

ATTEST:

Lynnette R. Jones, City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney's Office

DEPARTMENT OF TAXATION

By: _____
Executive Director
Nevada Department of Taxation

Dated this ____ day of _____, 2010.

APPROVED AS TO FORM:

By: _____
[Name and Title]

EXHIBIT A

NOTICE TO DEPARTMENT OF TAXATION

Name of Business: _____ (the "Business")

Business Address: _____

Department of Taxation Identification Number for Business: _____

The City of Reno hereby notifies the Department of Taxation that the Business is located within the City of Reno, Nevada Tourism Improvement District No. 2009 (Freight House) (the "District"). The Business collects tax revenues generated within the District and such revenues shall be administered in accordance with the City of Reno, Nevada Tourism Improvement District No. 2009 (Freight House) Cooperative Agreement dated as of February 24, 2010.

CITY OF RENO, NEVADA

By:_____

Printed Name and Title

Date

STAFF REPORT

To: Mayor and City Council

Agenda Item: **H.1**

Date: **2-24-2010**

Thru: Donna Dreska, City Manager

H.1

Subject : Staff Report: Resolution No. Resolution in the best interest of the City to lease and Resolution of Intent authorizing certain City owned real property identified as vacant office space located at City Hall, 1 East First Street, to be leased by public auction for a minimum monthly lease amount of \$1.65 per square foot (s.f.) for corner suites and \$1.50 per s.f. for interior suites in accordance with the provisions of NRS 268.059 - 268.062 and Title 15 of the Reno Municipal Code.

From: Steve Hardesty, Management Analyst
Lori Miles, Property Program Technician

Summary: The subject property involves a fifteen story high-rise office building, including a finished basement housing both tenants and City of Reno employees, and is currently used as Reno City Hall. Staff recommends Council authorization of the public auction of certain City owned property identified as vacant office space located at City Hall, 1 East First Street, through adoption of the attached Resolution.

Previous Council Action: None.

Background: The property is located on the northeast corner of First and Virginia Streets, and was purchased by the City June 28, 2002. On the property is a fifteen story high rise office building constructed on a concrete foundation and involves metal and glass construction. The property is currently used as Reno City Hall, and houses ten and half floors of City employees. Four and half floors plus a portion of the basement is rented to outside tenants.

Within the last year the City has gone from one vacant office (336 S.F.) to seven vacant offices (2,337 S.F.) due to retirement, death, company downsizing and business closures due to the economic downturn. With the constraints of leasing per NRS 268.059 – 268.062 and Title 15 of the RMC, it did not make economic sense to obtain two appraisals until there were enough vacancies to support the cost of both appraisals.

In preparation for the current proposed public auction two appraisals were ordered and received in January, 2010. The appraisal of John S. Wright & Associates estimated the highest market rent value as \$1.65 per square foot for corner offices with views and \$1.50 per square foot for interior offices which appraisal reflects the highest value. State law requires that the City offer the property at the highest appraised value, thus the minimum bid price is to be set at \$1.65 per s.f. for corner offices and \$1.50 per s.f. for interior offices.

Discussion: The subject property will be noticed for lease via sealed bids in advance of, and as a part of the public auction. Any and all approved bids must be at a minimum of the highest appraised value. The highest bid, which will be opened, dated and time stamped, and recorded prior to the public auction, will be the minimum starting bid at the public auction. Upon completion of the auction, Council can direct staff to enter into an Agreement of Lease for the vacant offices and authorize to have City Manager execute all necessary documents. In the event that the subject property does not lease at public auction, staff will return to Council and seek a second public auction process within the 6 month time frame of the appraisals.

Financial Implications: The expense of noticing and advertising the auction is estimated at approximately \$1,000. The amounts so expended for advertising and noticing the auction along with the amounts of the two current appraisals and any improvements needed such as carpet and paint would be returned from the lease of the property. There is potential that the lease of the property could generate a minimum of \$43,115.40 per year. Anticipated revenues from the lease of this property are to be included in the funding necessary for the 1E1 Performa.

Legal Implications: Chapter 268 of the Nevada Revised Statutes requires that, absent an applicable exemption, the sale or lease of city owned real property is subject to certain appraisal and public auction requirements. See NRS 268.059 – NRS 268.062, and Title 15 of the Reno Municipal Code. The minimum price for the lease of the property must not be less than the highest appraised value. See NRS 268.061(c). Upon determining that it is in the best interest of the City to lease a certain property, the City is required to adopt a resolution of its determination and its intent to lease the subject property. See NRS 268.061 – 268.062, and RMC 15.01.100. Thereafter, a Notice of the adoption of the Resolution of Intent to Lease must be posted and published for three (3) consecutive weeks. After the Notice has been sufficiently posted and published, staff will return to City Council on March 24, 2010 to proceed with the public auction, accept the highest bid, and complete the lease of the vacant office space within the 1 East First Street property.

Recommendation: Staff recommends Council adoption of the attached Resolution of Intent to Lease the subject property identified as vacant office space located at City Hall, 1 East First Street, for a minimum price of \$1.65 per s.f. for corner offices and \$1.50 per s.f. for interior offices and direct staff to notice and advertise a public auction in accordance with the provisions of Chapter 268 of the Nevada Revised Statutes and Title 15 of the Reno Municipal Code.

Proposed Motion: I move to adopt Resolution No. ____ and direct staff to notice and advertise a public auction for the lease of the City owned property identified as vacant office space at 1 East First Street.

RESOLUTION NO. _____

RESOLUTION IN THE BEST INTEREST OF THE CITY TO LEASE AND RESOLUTION OF INTENT AUTHORIZING CERTAIN CITY OWNED REAL PROPERTY IDENTIFIED AS VACANT OFFICE SPACE LOCATED AT CITY HALL, 1 EAST FIRST STREET, TO BE LEASED BY PUBLIC AUCTION FOR A MINIMUM MONTHLY LEASE AMOUNT OF \$1.65 PER S.F. FOR CORNER SUITES AND \$1.50 PER S.F. FOR INTERIOR SUITES IN ACCORDANCE WITH THE PROVISIONS OF NRS 268.059 – 268.062 AND TITLE 15 OF THE RENO MUNICIPAL CODE.

WHEREAS, the City of Reno may lease real property pursuant to NRS 268.059, *et seq.*, and RMC Chapter 15.01 when such lease is in the best interests of the City and the City has passed a Resolution of Intent to lease such certain real property; and

WHEREAS, the City owns certain real property identified as vacant office space located at 1 East First Street and more particularly described in the Legal Description which is attached hereto as “EXHIBIT A” and incorporated herein by reference (the “Property”); and

WHEREAS, the lease value of the Property exceeds the sum of \$1,000; and

WHEREAS, two appraisers qualified in accordance with Title 15 of the Reno Municipal Code have appraised the Property; and

WHEREAS, the respective appraisal reports have been prepared and obtained within the last six months; and

WHEREAS, the appraisal report dated January 8, 2010, prepared by John S. Wright & Associates identifies the highest appraised lease value for the Property in the amount of \$1.65 per s.f. for the corner suites and \$1.50 per s.f. for the interior suites; and

WHEREAS, the lease of the Property will be in the best interests of the City as the subject property is vacant and not needed for City purposes and the funds received from the lease of the Property will benefit the City; and

WHEREAS, pursuant to NRS 268.061(c) the Property must be leased for not less than the highest appraised value, which is the amount of \$1.65 per s.f. for corner suites and \$1.50 per s.f. for interior suites; and

NOW, THEREFORE BE IT RESOLVED that:

1. In accordance with NRS 268.061(1) (a) and RMC 15.01.100, the Reno City Council hereby determines that the lease of vacant office space in the City owned Property, located at City Hall in 1 East First Street, is in the best interest of the City, as such property is vacant and not needed for municipal purposes and the proceeds of the lease will benefit the City;

2. Further, in accordance with NRS 268.062 and RMC 15.01.100, the Reno City Council hereby declares its intention to lease the Property, located at 1 East First Street and identified as vacant office space, by public auction to the highest bidder for a minimum lease amount of price of \$1.65 per s.f. for corner offices and \$1.50 per s.f. for interior office suites;(this amount is the highest amount on the appraisal).

3. Bidders shall submit their sealed written bids (1 original and 15 copies) in a single envelope to the Reno City Clerk. All bids must be received by the Reno City Clerk no later than 3:00 p.m., Pacific Time, on March 23, 2010; the envelope should be marked "BID FOR LEASE OF VACANT OFFICE SPACE AT CITY HALL". E-mails and facsimiles will not be accepted. Any proposal of less than the minimum lease amount shall be considered non-responsive and rejected. Submitted materials become the property of the City and will not be returned.

4. The written sealed bids will be opened, examined and considered by City Council at its regularly scheduled meeting on March 24, 2010. The City Council will then call for oral bids, which must exceed by at least 5% of the highest written bid. The City will evaluate the bids on whether they are responsive to the terms and conditions for which the property is offered for lease, including the minimum price requirements, and the highest responsive bid will be finally accepted unless the City Council deems it to be in the best interest of the public to reject any and all bids and withdraw the property for lease.

5. Additional terms and conditions upon which the Property will be leased can be obtained by contacting Lori Miles, City of Reno, Department of Public Works, Property Division, 1 E. 1st Street, Reno, Nevada 89505, Phone: (775) 334-3396.

6. This Resolution No. ____ shall be posted and published, in accordance with NRS 268.061(b)(1) & (2); and

7. This Resolution No. ____ shall also be posted, in accordance with NRS 268.062(2)(a), in three public places located within the County not less than 15 days before the City Council meeting scheduled for March 24, 2010; and

8. Notice of Adoption of this Resolution No. ____ shall also be published, in accordance with NRS 268.062(2)(b), at least once a week for three (3) consecutive weeks before the City Council meeting scheduled for March 24, 2010.

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/Upon motion by City Council Member _____, seconded by City Council Member _____, the foregoing Resolution was passed and adopted this _____ day of _____, 2010 by the following vote:

AYES: _____ NAYS _____

ABSENT: _____ ABSTAIN: _____

Approved this _____ day of _____, 2010.

Robert A. Cashell, Sr., Mayor

ATTEST:

LYNNETTE JONES, City Clerk

EXHIBIT "A"

Lots 1, 2 and 3 of Block W, Reno Townsite as shown on the map prepared for the Town of Reno, Washoe County, Nevada as filed for record in the office of the Washoe County Recorder on March 20, 1908 as Tract Map No. 94.

APN: 011-062-20

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Available Vacant Offices:

Suite No.	Suite Size (SF)	Minimum per SF
1105	323	\$1.65
1106	240	\$1.50
1401	320	\$1.50
1402	409	\$1.50
1403	449	\$1.50
1409	336	\$1.50
1413	260	\$1.65

STAFF REPORT

To: Mayor and City Council

Agenda Item: H.2

Date: **2-24-2010**

Thru: Donna Dreska, City Manager

H.2

Subject : Staff Report: Resolution No. Resolution granting approval of \$135,000 to Artown for Festival Sponsorship and Opening Night Sponsorship for FY2010 (PRCS Special Revenue Fund and Room Tax Fund).

This item was continued from the December 16, 2009 and January 27, 2010 City Council meeting.

H.2.1 Approval of an Agreement with Artown for Festival Sponsorship for FY2010.

From: Christine A. Fey, Arts and Culture Manager

Summary: The Reno Arts and Culture Commission recommends City Council adoption of the Resolution granting approval of \$135,000, which includes approval of an Agreement with Artown for \$120,000 Festival Sponsorship for FY2010 to produce the July 2010 Festival and \$15,000 Opening Night Sponsorship by the Reno Arts and Culture Commission.

Previous Council Action: On December 16, 2009, the City Council tabled this item pending a budget meeting on January 8, 2010.

On January 27, 2010, City Council directed the Reno Arts and Culture Commission to review the sponsorship funding level and make a recommendation regarding the FY10 Artown Festival sponsorship to Council.

Background: Artown was founded by the Reno Arts and Culture Commission in 1996. Artown is a month-long festival bringing both local residents and visitors into the downtown core area in addition to a variety of venues throughout the City and region.

The City's sponsorship has increased over time from \$40,000 in 1997 to \$125,000 in 2007 and 2008. The City sponsorship was reduced in 2009 to \$120,000 (representing a 4% reduction) due to budget constraints. The audience has increased from 30,000 in 1996 to 350,000 in 2008. Staff received the final report on January 29, 2010, which reports 309,000 for the 2009 festival audience total.

Ever since Artown became a 501c3 in 1999, the City's sponsorship of the organization has been reviewed by City Council at mid-year, typically in late December or January, although last year it was delayed until February due to budget uncertainties. In addition, the Festival is a work in progress until the spring when the presenting organizations have entered their submissions into the data base and have been approved by Artown for inclusion in marketing materials. The City's sponsorship funds the Festival which takes place in the following fiscal year (July), however, in the past the organization has needed the funds in the third and fourth quarters of the

current fiscal year to meet their obligations in order to be able to present the Festival in July. This is the only arts sponsorship or grant that the City pays in advance of the event. All other arts grants and sponsorships are paid on a reimbursement basis. The City has made an exception for Artown because they need seed money to produce the marketing materials and for general operating costs.

Discussion: At a special meeting of the Reno Arts and Culture Commission on February 5, 2010, the Commission reviewed the request including the 5% reduction proposed by staff to balance the FY2009/10 budget. After discussion, the Commission decided to recommend full funding for the sponsorship and agreed to take the proposed \$6,000 cut from the unspent portion of the Commission's budget in the Room Tax Fund.

Since 1999, the Reno Arts and Culture Commission has been one of the sponsors of opening night of Artown. On February 1, 2010, the Commission reviewed the opening night proposal by Artown and voted unanimously to sponsor opening night on July 1, 2010 at the \$15,000 level, as in the past. During their March 1, 2010 meeting, the Commission will discuss the amount they will allocate for opening night sponsorship in the next fiscal year but did not feel comfortable changing their support without a thoughtful discussion and plenty of notice.

Financial Implications: The City's sponsorship of Artown was reduced to \$120,000 in FY 2008/09 (which represented a 4 % reduction) due to the City's economic constraints and was kept at the same level for FY2009/10 due to ongoing economic conditions. The \$120,000 is currently budgeted in the Parks, Recreation and Community Services Special Revenue Fund adopted budget for FY2010. In addition, the Reno Arts and Culture Commission's approved FY 2010 budget includes sponsorship of Artown's opening night in the amount of \$15,000 which is included in the Room Tax Fund.

As the economic downturn has not improved, staff was recently directed to provide a list of possible budget reductions for Council's consideration. Staff identified a possible reduction of an additional 5% to the Artown Sponsorship in the amount of \$6,000. At Council's request, the Commission reviewed the funding level and decided to recommend full funding for the Artown FY2009/10 sponsorship by taking the \$6,000 proposed budget cut from the unspent portion of their budget, also in the Room Tax Fund.

Due to the City's financial condition over the past year and subject to Council's approval, the following reductions have occurred with other arts and culture organizations.

- In FY09-10, Pioneer Center was reduced to \$63,700 (which represented a 9% reduction from FY08-09) and;
- In FY09-10, Sierra Arts Foundation has reduced its expenditure to \$10,000 (which represented a 50% reduction from FY08-09 and;
- In FY09-10, Arts and Culture Grants have been reduced by 12.6% through an initial cut of \$10,000 to the Challenge Grant Fund and unanticipated savings have been realized through \$21,500 in unclaimed grants. In years past the returned grant funding would have been recommended for reallocation by the Arts and Culture Commission, however, staff recommends the savings be used to apply towards the budget deficit, subject to Council direction. The Arts and Culture Commission supports this action.

Legal Implications: NRS 268.028(2) states the governing body or its authorized representative may make grants by resolution to nonprofit organizations created for religious, charitable or educational purposes, to be used for any purpose which will provide a substantial benefit to the inhabitants of the city. Legal has included a “Funding Out” paragraph 2.9 to the Agreement to provide additional financial flexibility.

Advisory Commission Vote:

On February 1, 2010, the Commission voted to approve the Commission’s \$15,000 Opening Night Sponsorship for FY2010: eight in favor; none opposed; one vacant.

On February 5, 2010, the Commission voted to approve \$120,000 for Artown’s FY2010 Festival Sponsorship: Eight in favor; none opposed; one vacant.

Recommendation: The Reno Arts and Culture Commission recommends Council adoption of the attached \$135,000 Resolution with Artown comprised of \$120,000 Festival Sponsorship and \$15,000 Opening Night Sponsorship for FY 2010, including approval of the attached Agreement and authorization for the Mayor to sign.

Proposed Motion: I move to adopt Resolution No. _____, and approve the Agreement in the amount of \$135,000, and authorization for the Mayor to sign.

RESOLUTION NO. _____

**RESOLUTION GRANTING APPROVAL OF UP TO \$135,000 TO ARTOWN
FOR FESTIVAL SPONSORSHIP AND OPENING NIGHT SPONSORSHIP FOR
FY2010.**

WHEREAS, the City of Reno may grant funds to a nonprofit organization created for religious, charitable or educational purposes pursuant to NRS. 268.028 when such expenditure provides a substantial benefit to the inhabitants of the City; and

WHEREAS, Artown is a qualifying Nevada domestic non-profit corporation created for religious, charitable or educational purposes which has requested funds to offset expenses for the annual Artown – Reno Summer Arts Festival event to be held in July, 2010, and to thereby assist with the advancement of arts and culture in the City, and

WHEREAS, the City of Reno finds the grant to Artown will help further the advancement of arts and culture in the City and thereby provide a substantial benefit to the inhabitants of the City; and

WHEREAS, the grant is subject to conditions contained in a contract in the form attached hereto as Exhibit A;

NOW, THEREFORE, BE IT RESOLVED that the City of Reno approves the grant of ONE HUNDRED AND TWENTY THOUSAND DOLLARS AND NO CENTS (\$120,000) for Festival Sponsorship by the City of Reno and FIFTEEN THOUSAND DOLLARS AND NO CENTS (\$15,000) for Opening Night Sponsorship by the Reno Arts and Culture Commission, to Artown to be used as designated in and subject to the conditions set forth in the attached grant agreement; and,

BE IT FURTHER RESOLVED, that should this grant or any portion thereof not be used as set forth in this Resolution, any unused funds shall be returned to the City of Reno.

Upon motion by Council member _____, seconded by City Council Member _____, the foregoing Resolution was passed and adopted this _____ day of _____, 2010, by the following vote:

AYES: _____ NAYS: _____

ABSENT: _____ ABSTAIN: _____

Approved this _____ day of February, 2010.

ATTEST:

Robert A. Cashell, Sr., Mayor

Lynnette Jones, City Clerk

AGREEMENT FOR ARTS 2010 FESTIVAL MANAGEMENT SERVICES

This agreement ("Agreement") is entered into at Reno, Nevada, this ____ day of February, 2010, by and between the **City of Reno**, a municipal corporation (the "City"), and **Artown** ("Contractor").

RECITALS

This Agreement is entered into based upon the following:

A. The City provides major sponsorship for Artown – The Reno Summer Arts Festival in 2010, in order to raise community awareness of arts and culture organizations and opportunities in Reno.

B. The Reno Arts and Culture Commission approved sponsorship of opening night of Artown 2010.

C. The City desires to secure the services of Artown as directed by the City and detailed in the Scope of Work set forth below.

D. Contractor is uniquely qualified to provide said services and has experience with the management and operations of the summer arts festival since 1999.

E. Contractor represents that it is duly qualified and able to render the services as described herein.

F. The City has budgeted and desires to distribute a specified sum of funds to Contractor pursuant to the terms and conditions of this Agreement provided that Contractor complies with all terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into the Agreement by this reference, the parties mutually agree as follows:

Article 1 Definitions and Attachments

1.1 **"Allowable Costs"** shall mean all costs properly incurred by the Contractor in accordance with Article 3 of this Agreement.

1.2 **"City Staff"** shall mean the person identified as the City's contract administrator in Section 5.13 of this Agreement.

1.3 **"Festival"** shall mean, collectively, the cultural programs, events, advertising, marketing, management activities and any other program or work undertaken or coordinated by Contractor as a part of the Artown Festival.

1.4 **“Funds”** shall mean those funds disbursed to Contractor pursuant to the terms and conditions set forth in this Agreement.

1.5 **“Executive Director”** shall mean the person identified by Contractor in Section 5.13 of this Agreement as its primarily point of contact for purposes of contract administration.

Article 2 Funding

2.1 **Funding Amount.** In exchange for Contractor’s performance of this Agreement, and the Scope of Work set forth in Article 4, City agrees to disburse Funds to Contractor in a total amount of up to ONE HUNDRED AND TWENTY THOUSAND DOLLARS AND NO CENTS (\$120,000.00) for Festival Sponsorship by the City of Reno and FIFTEEN THOUSAND DOLLARS AND NO CENTS (\$15,000.00) for Opening Night Sponsorship by the Reno Arts and Culture Commission. In no event shall City be obligated to reimburse Contractor for any costs in excess of \$135,000.00, whether or not those excess costs were incurred pursuant to this Agreement at the direction of City Staff.

2.2 **Invoices.** Contractor shall submit invoices to City no more frequently than monthly. As a condition precedent to any payment made to Contractor under this agreement, Contractor shall submit quarterly to the City an updated “Financial Status Report”, an example of which is set forth in Attachment A. Contractor shall receive payments from the City based upon approved invoices within thirty (30) days of invoice postmark date.

2.3 **Quarterly Reports.** Contractor shall submit quarterly progress reports to the City.

2.4 **Reduction in Funding.** City reserves the right to reduce the amount of Funds disbursed to Contractor upon determination by City Staff that Contractor has failed to comply with any material term or condition of this Agreement.

2.5 **Duty to Provide Funding.** Contractor agrees to obtain, incur and document, all expenses, costs, and any other liabilities necessary to conduct the Festival and to pay when due, all such expenses, costs and liabilities. The City’s obligation to provide Funds pursuant to this Agreement is contingent upon Contractor’s timely payment of creditors.

2.6 **Termination.** This Agreement may be terminated at any time by written notice from either party, with or without cause. In such event, all finished and unfinished documents, data, deliverables, reports and work product, at the option of the City, become its property and shall be delivered to it or to any party it may designate. In the event of such termination, Contractor shall be paid for all satisfactory work, unless such termination is made for cause, in which event compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.

2.7 **Reporting Requirements.** Within sixty (60) days following the end of the Festival, Contractor agrees to submit a detailed final report, including all Allowable Costs incurred and/or paid by Contractor in conjunction with the Festival, as well as all revenues related to the Festival. Contractor’s final report shall include narrative information detailing

attendance, publicity and any other details it deems necessary. Contractor may be asked to provide periodic progress reports, in a form acceptable to the City, to the Reno Arts and Culture Commission or City Staff providing sufficient detail to determine the progress and financial status of the Festival. This report shall be counted as one of the quarterly reporting requirements.

2.8 Record Inspection and Retention. The City or its representative shall have the right to inspect and copy the records of Contractor upon reasonable notice. In addition, if any audit has been performed or is commenced during the term of this Agreement, a copy of such audit shall be provided to the City. Contractor agrees to keep its books in accordance with an approved bookkeeping system, to retain its books and records, including all records relating to the Festival, for a period of three (3) years following completion of the Festival, and to make such books and records available for inspection by City Staff, or other designated representative of the City, at any time from the effective date of this Agreement until expiration of the required retention period.

2.9 Funding Out. Notwithstanding any other provision of this Agreement, in the event that the City has failed to appropriate or budget funds for the purposes specified in this agreement, or that the City has been required, in its sole judgment, to amend previous appropriations or budgeted amounts to eliminate or reduce funding for the purposes in this Agreement, the City's obligation to fund any unpaid amounts shall be modified or eliminated in accordance with the City's appropriations or budget decision and the Agreement shall be deemed so modified or terminated without penalty, charge or sanction.

Article 3 Use of Funds

3.1 Allowable Costs. Unless specified in writing by City Staff, costs incurred by Contractor in the conduct of the Festival for which Contractor may receive Funds, are limited to the following:

- 3.1.1 Administrative. Payments for contractors and/or employee salaries, and benefits for executive and supervisory administrative staff, program directors, support staff and equipment to support administrative functions.
- 3.1.2 Artistic. Payments for contractors and/or employee salaries and benefits for artistic directors, conductors, curators, composers, choreographers, designers, visual, performing and literary artists.
- 3.1.3 Technical/Production. Payments for contractors and/or employee salaries and benefits specifically identified with and applicable to the festival, for technical management, such as – technical directors, wardrobe, lighting, and sound crew, stage crews, video and film technicians, and exhibit preparers and equipment to support technical/production functions.
- 3.1.4 Space Rental. Payments specifically identified with the rental of the offices, rehearsal, performance, theater, and exhibition space.

3.1.5 Marketing. Costs for marketing, advertising, publicity or promotion, including printing and postage.

3.2 **Restrictions on Use.** Funds may not be utilized for payment of any of the following:

3.2.1 Capital Expenditures. The cost of permanent equipment, construction and improvements which increase the value or useful life of contractor's buildings or equipment, nor for the acquisition of the contractor's building or land, or any interest therein.

3.2.2 Fines and Penalties. Costs resulting from contractor's violations of, or failure of the organization or individual to comply with federal, state, and local laws, and regulations.

3.2.3 Interest. Interest of any kind paid on loans, notes, borrowed funds, or for any other reason, however presented.

3.2.4 Reserve Funds. Contributions to a reserve fund for any similar provisions.

3.2.5 Scholarships and Awards. Payment or contribution to any form of Scholarship or Award, or funding of educational expenses or costs for students, except as a part of a Festival program or event in the form of free or reduced admission or participation fees.

3.2.6 Lobbying. Costs of publicity or production of materials intended to support, defeat or otherwise influence legislation or any kind by federal, state, or local government.

3.2.7 Other. Attorney's fees, litigation costs, debt collection costs, political contributions, donations and losses.

Article 4

Scope of Work

4.1 **Scope of Work.** Contractor's Scope of Work shall consist of the following items:

- A. Design, produce and implement a comprehensive public relations and publicity plan for local, regional and national coverage of the Festival;
- B. Provide a contact point for Festival information through phone, office, mail and a Web site; and media contacts via personal, phone, mail or electronic means of communications;
- C. Hold meetings as necessary with participating groups and individuals to book events and coordinate scheduling, technical needs, publicity and other matters as required;

- D. Identify technical and logistic needs and coordinate provision of services with City staff and other entities as appropriate;
- E. Act as spokesperson for the Festival and represent the Festival in speaking and other public engagements;
- F. Liaison with City Staff, the Reno Arts and Culture Commission or any parties designated by City as necessary for the successful implementation of contract provisions;
- G. Invite a member of the Reno City Council, or it's designee, to serve on the Board of Directors.
- H. Provide grant writing and other fund raising services as required to successfully implement the Festival and the publicity plan; and,
- I. Such other services as may become necessary for the successful implementation of the Festival.

4.2 **Deliverables.** Contractor's deliverables shall consist of the following:

- A. A comprehensive public relations and publicity plan for local, regional and national coverage of the Festival
- B. A database of Festival events that provides information on venues, schedules, types of events, the groups or individuals involved and contact information;
- C. Post-Festival evaluations and reports detailing media coverage, attendance and other related information;
- D. A sponsorship agreement no later than February 1, 2010, outlining recognition and acknowledgment of the City of Reno as one of the Festival's primary sponsors; and,
- E. Any other deliverables as mutually agreed to by both parties that may become necessary for the successful implementation of this Agreement.

Article 5

Additional Terms

5.1 **Indemnification of the City of Reno.** Neither the City, City Staff, City Council nor City Arts and Culture Commission shall be responsible or liable for any debt, action, obligation, negligence or liability committed or incurred by the Contractor, its staff, agents or clientele, and Contractor hereby agrees to indemnify, defend and hold harmless the City, City Staff, City Council, City Arts and Culture Commission, and each of them, their officers, employees, agents and volunteers, from and against any and all claims, liabilities, and damages

of any kind, including reasonable attorney's fees and costs arising from or relating to any breach of any of the terms and conditions of this Agreement. No payment, final or otherwise, shall operate to release the Contractor from any legal obligation under this provision.

5.2 Legal Actions against Contractor. If any legal action of any nature is filed against the Contractor, Contractor shall notify City Staff within three (3) days of receipt of complaint.

5.3 Authority to enter into this Contract. Contractor hereby represents and warrants that the undersigned person signing as an officer on behalf of Contractor has authority to enter into this Agreement on behalf of Contractor and to bind the same to this Agreement, and further, that there are no restrictions or prohibitions contained in any article of incorporation or bylaws of Contractor against entering into this Agreement.

5.4 Assignment of this Contract. This Agreement is not assignable.

5.5 No Joint Enterprise or Other Entity. It is understood and agreed that no employee of the Contractor nor any other person or company hired by Contractor in connection with the Festival or otherwise shall, under any circumstance, be deemed an agent, contractor, employee or member of the City nor the Reno Arts and Culture Commission with the exception of a City Councilperson acting in his or her capacity as a member of Artown's Board of Directors as set forth in 4.1(G). This Agreement shall not be construed to create any form of agency, partnership, joint venture, employer-employee relationship, principal-agent relationship, or other common entity or enterprise of any kind, between the parties.

5.6 Insurance. Contractor shall maintain for the term of this Agreement, and for a two year period of time after completion of this Agreement, comprehensive general liability insurance for limits of not less than one million dollars (\$1,000,000) for bodily injury and property damages, per occurrence. As evidence of liability insurance coverage, the City will accept certification of insurance issued by an authorized representative of the insurance carrier. Each certificate shall contain a 30-day written notice of cancellation to the certificate holder and shall name the City as an additional insured. Contractor shall maintain during the term of this Agreement Workers Compensation insurance covering the statutory liability as determined by the compensation laws of the State of Nevada. Contractor must also comply with all applicable state laws which require participation in any state workers compensation fund.

5.7 Independent Contractor. The parties agree that Contractor is an independent contractor and this Agreement is entered into in conformance with the provisions of NRS 284.173. Therefore, there shall be no:

- 5.7.1 Withholding of income taxes by the City;
- 5.7.2 Industrial insurance provided by the City;
- 5.7.3 Participation in group insurance plans which may be available to employees of the City;
- 5.7.4 Participation or contributions by either the independent contractor or City to any public employees retirement system;

- 5.7.5 Accumulation of vacation leave or sick leave;
- 5.7.6 Unemployment compensation coverage provided by City if the requirements of NRS 612.085 for independent contractors are met.

5.8 **Limited Liability.** The City does not waive and intends to assert any statutory privileges available to it under Nevada law. Contract liability of both parties shall not be subject to punitive damages. Actual damages for any City breach shall never exceed the amount of funds which have been appropriated for payment under this Agreement, but not yet paid, for the fiscal year budget in existence at the time of the breach.

5.9 **Compliance with Applicable Law.** Contractor shall comply with all applicable federal, state and local laws and regulations, including but not limited to business licensing requirements, workers' compensation and wage and hour laws.

5.10 **Interpretation and Severability.** This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement shall be interpreted in accordance with the laws of the State of Nevada. If any provision of this Agreement or its application is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall not be affected.

5.11 **Modification.** This Agreement is the entire Agreement between the parties. This Agreement shall not be modified or amended nor shall any rights hereunder be waived, except by written instrument signed by both parties, and authorized by the City Council.

5.12 **Benefits.** This Agreement is entered into solely for the benefit of the parties hereto. It shall confer no benefits, direct or indirect, on any third persons, including employees of the parties. No person or entity other than the parties themselves may rely upon or enforce any provision of this Agreement. The decision to assert or waive any provision of this Agreement is solely that of each party.

5.13 **Contractor Principal in Charge.** Contractor's Executive Director, or designee shall be responsible for the performance of the Scope of Work described herein. It is understood that Contractor shall coordinate its performance with the City's Contract Administrator which shall be the Arts and Culture Manager, or designee.

5.14 **Non-Discrimination Policy.** Contractor shall not discriminate in its employment practices against any person by reason of race, religion, color, sex, age or national origin and agree to comply with the provisions of said laws and orders as well as all laws and orders relating to the employment of the handicapped, the employment of veterans and the use of minority business enterprises to the extent any such laws and orders are applicable in the performance of work or furnishing of services, materials or supplies hereunder. For this purpose, the provisions of such laws and orders and pertinent regulations, as now in force or hereafter amended, shall be deemed an integral part of this Agreement to the same extent as if written at length.

5.15 **Jurisdiction.** This Agreement shall be administered and interpreted under the laws of the State of Nevada. If any part of this Agreement is found to be in conflict with

applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in full force and effect.

5.16 **Notices.** All notices, requests, demands and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given by registered or certified mail, return receipt requested, postage prepaid thereon as follows:

CITY

City of Reno Parks, Recreation
And Community Services
Attn: Arts and Culture Manager
P. O. Box 1900
Reno, Nevada 89505

CONTRACTOR

Artown
Attn: Executive Director
P. O. Box 3085
Reno, Nevada 89505

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date entered on the first page hereof.

CITY OF RENO

CONTRACTOR

By: _____
Robert A. Cashell, Sr.
Mayor

By: _____
Title: _____

ATTEST

Lynnette Jones
City Clerk

APPROVED AS TO FORM:

By: _____
Office of the City Attorney

Attachment A
Financial Status Report

Billing Period: {02/01/10 – 02/28/10}

Report Date: {03/01/10}

A. Total Contract Amount (NTE) Festival Sponsorship by the City and Opening Night Sponsorship by the Reno Arts and Culture Commission.	\$120,000 \$15,000
B. Total Invoices Paid to Date • Invoice No. 200234525 dated 1-03-10 for \$25,000	\$20,000
C. Total Past Invoices Unpaid • None	\$0
D. Current Invoice for 02/01/10 – 02/28/10	\$20,000
E. Balance Remaining [A-(B+C+D)] as of 02/04/10	\$95,000
F. Estimated Invoice for 02/01/10 – 02/28/10 {Description of work items/rationale of estimate}	\$20,000
G. Projected Balance Remaining [E-F] as of 03/01/10	\$75,000

STAFF REPORT

To: Mayor and City Council

Agenda Item: **H.3**

Date: **2-24-2010**

Thru: Donna Dreska, City Manager

H.3

Subject : Staff Report: Resolution No. Resolution granting approval of \$10,000 to Sierra Arts Foundation to maintain a Web-Based Arts Calendar (PRCS Special Revenue Fund).

This item was continued from the December 16, 2009 and January 27, 2010 City Council meeting.

H.3.1 Approval of an Agreement with Sierra Arts Foundation for Sponsorship of a FY2010 Web-Based Arts Calendar.

From: Christine A. Fey, Arts and Culture Manager

Summary: The Reno Arts and Culture Commission recommends City Council adoption of a Resolution granting \$10,000 and approval of Agreement with Sierra Arts Foundation for the maintenance of a web-based arts calendar during FY2010.

Previous Council Action: On December 16, 2009, City Council tabled this item pending a budget meeting on January 8, 2010.

On January 27, 2010, the City Council directed the Reno Arts and Culture Commission to review the funding level of this sponsorship and make recommendation to Council

Background: For the past decade Sierra Arts has received \$20,000 each year to produce a variety of programs and events including the Americana Festival. In 2008, the Americana Festival was taken over by the Nevada Bluegrass Society, which allowed Sierra Arts to consider other ways to advance the arts in our community. For some time, the Reno Arts and Culture Commission and Sierra Arts have heard from numerous arts and culture organizations, as well as community members, businesses and visitors, that a comprehensive web-based calendar would be a tremendous asset for the arts in our region. In FY08-09, Council approved a Resolution in the amount of \$20,000 to Sierra Arts to create and maintain a web-based arts calendar. Sierra Arts used \$10,000, of the \$20,000 they received last year, to create the Northwestern Nevada portion of the web site. The remaining \$10,000 was used to hire a part-time web specialist whose duties include editing submissions and adding them to the calendar.

In FY09-10 Sierra Arts Foundation reduced its expenditures for this program to a total of \$10,000. The funds will be used by the organization to continue funding a portion of the cost of a part-time staff member to maintain the web-based arts calendar. The part-time web specialist regularly gathers and inputs the information needed to update the community arts & culture

calendar. This represents a 50% reduction from the FY08/09 agreement. The calendar is up and running but requires weekly maintenance to keep it up to date and useful to patrons and arts and culture organizations for event planning purposes.

Discussion: At a special meeting on February 5, 2010 the Reno Arts and Culture Commission reviewed the request for a \$10,000 sponsorship of the web based calendar which the Commission recognized is extremely important to many of our arts organizations in Northwestern Nevada. When making its funding recommendation last year, the Reno Arts and Culture Commission recognized it may take several years of subsidy before the calendar becomes an established resource with its own funding mechanisms. The City's \$10,000 sponsorship will continue to fund a part-time staff position at Sierra Arts to ensure that all Northwestern Nevada organizations, the majority of which are located in Reno, are provided the opportunity to include their information in the calendar. The success of a calendar depends on correct and timely information, which a dedicated staff member will provide. The Commission noted that Sierra Arts would need to apply for City funding for the first few years to ensure continuity, but anticipates that the sale of banner ads to commercial entertainment producers will help defray costs in future years, and reduce or replace the need for City support.

Historically this agreement has been taken to Council for consideration in mid-year to allow the organization to develop a scope of work.

Financial Implications: \$10,000 for Sierra Arts Foundation is included in the adopted FY2009/10 Parks, Recreation and Community Services Special Revenue Fund Budget. As this agreement was voluntarily reduced by 50% from the funding level last fiscal year, staff did not identify additional reductions to this Sponsorship to address the City's FY10 funding shortfall.

Due to the City's financial condition over the past year and subject to Council's approval, the following reductions have occurred with other arts and culture organizations.

- In FY09-10, Pioneer Center was reduced to \$63,700 (which represented a 9% reduction from FY08-09) and;
- In FY09-10, Artown was reduced to \$120,000 (which represented a 4% reduction from FY08-09) and;
- In FY09-10, Arts and Culture Grants have been reduced by 12.6% through an initial cut of \$10,000 to the Challenge Grant Fund and unanticipated savings have been realized through \$21,500 in unclaimed grants. In years past, the returned grant funding would have been recommended for reallocation by the Arts and Culture Commission, however, staff is recommending the savings be used to apply towards the budget deficit, subject to Council direction. The Arts and Culture Commission supports this action.

Legal Implications: NRS 268.028(2) states that the governing body of a city or its authorized representative may make grants by resolution to nonprofit organizations created for religious, charitable or educational purposes, to be used for any purpose which will provide a substantial benefit to the inhabitants of the city.

Advisory Commission Vote: Eight in favor; none opposed; one vacant.

Recommendation: The Reno Arts and Culture Commission recommends Council adoption of the attached Resolution with Sierra Arts Foundation of \$10,000 for FY2010 the Web-Based Arts Calendar Sponsorship, including approval of the attached Agreement and authorization for the Mayor to sign.

Proposed Motion: I move to adopt Resolution No. _____ and approve the Agreement in the amount of \$10,000, and authorize the Mayor to sign.

**RESOLUTION GRANTING \$10,000.00 TO SIERRA ARTS FOUNDATION TO
MAINTAIN A WEB-BASED ARTS CALENDAR**

WHEREAS, the City of Reno may grant funds, subject to conditions, to a nonprofit organization created for religious, charitable or educational purposes pursuant to NRS 268.028 when such expenditure provides a substantial benefit to the inhabitants of the City; and,

WHEREAS, Sierra Arts Foundation is a qualifying non-profit organization which has requested funds to enable it to create a web-based arts calendar which will enable the citizens of Reno to locate and attend art events; and,

WHEREAS, the City of Reno finds the grant of TEN THOUSAND DOLLARS AND NO CENTS (\$10,000.00) to Sierra Arts Foundation to maintain a web-based arts calendar will provide a substantial benefit to the inhabitants of the City;

NOW, THEREFORE, BE IT RESOLVED that the City of Reno approves the grant of the sum of TEN THOUSAND DOLLARS AND NO CENTS (\$10,000.00) to Sierra Arts Foundation, to be used as designated in the attached sponsorship grant agreement, which is approved; and,

BE IT FURTHER RESOLVED, that should this grant or any portion thereof not be used as set forth in this Resolution and the attached contract, any unused funds shall be returned to the City of Reno.

Upon motion by City Council Member _____, seconded by City Council Member _____, the foregoing Resolution was passed and adopted this _____ day of _____, 2010 by the following vote:

AYES: _____ NAYS _____

ABSENT: _____ ABSTAIN: _____

Approved this _____ day of _____, 2010.

Robert A. Cashell, Sr., Mayor

ATTEST:

LYNNETTE JONES, City Clerk

**AGREEMENT WITH SIERRA ARTS FOUNDATION
TO MAINTAIN A WEB-BASED ARTS CALENDAR**

This agreement (“Agreement”) is entered into at Reno, Nevada, this ____ day of February, 2010, by and between the **City of Reno**, a municipal corporation (the “City”), and **Sierra Arts Foundation**, a Nevada non-profit corporation (“Grantee”).

RECITALS

This Agreement is entered into based upon the following:

G. The City provides major sponsorship to Sierra Arts Foundation in order to raise community awareness of arts and culture in Reno year around.

H. The City desires to provide the second year funding for an Arts Calendar to Sierra Arts Foundation, as directed by the City and detailed in the Scope of Work set forth below, to maintain the Northern Nevada portion of a web-based arts calendar (Arts4Nevada.org).

I. Grantee is uniquely qualified to provide said services and has experience with the management of an ongoing Arts Calendar through Sierra Arts Magazine.

J. Grantee represents that it is duly qualified and able to render the services as described herein and that it is a qualifying non-profit organization under NRS 268.028.

K. The City has budgeted and desires to grant a specified sum of funds to Grantee pursuant to the terms and conditions of this Agreement provided that Grantee complies with all terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into the Agreement by this reference, the parties mutually agree as follows:

**Article 1
Definitions and Attachments**

1.6 **“Allowable Costs”** shall mean all costs properly incurred by the Grantee in accordance with Article 3 of this Agreement.

1.7 **“City Staff”** shall mean the person identified as the City’s contract administrator in Section 5.13 of this Agreement.

1.8 **“Arts Calendar”** shall mean, collectively, the creation, management and oversight of a web based calendar featuring cultural programs and events and any other program or work undertaken or coordinated by Grantee as a part of the Arts 4 Nevada.org Arts Calendar.

1.9 **“Funds”** shall mean those funds disbursed to Grantee pursuant to the terms and conditions set forth in this Agreement.

1.10 **“Executive Director”** shall mean the person identified by Grantee in Section 5.13 of this Agreement as its primary point of contact for purposes of contract administration.

Article 2 Funding

2.10 **Funding Amount.** In exchange for Grantee’s performance of this Agreement, and the Scope of Work set forth in Article 4, City agrees to disburse Funds to Grantee in a total amount of TEN THOUSAND DOLLARS AND NO CENTS (\$10,000.00). In no event shall City be obligated to reimburse Grantee for any costs in excess of \$10,000.00, whether or not those excess costs were incurred pursuant to this Agreement at the direction of City Staff.

2.11 **Invoices.** Grantee shall submit invoices to City quarterly. As a condition precedent to any payment made to Grantee under this agreement, Grantee shall submit to the City an updated “Financial Status Report”, an example of which is set forth in Exhibit A. Grantee shall receive payments from the City based upon approved invoices within thirty (30) days of invoice postmark date.

2.12 **Quarterly Reports.** Grantee shall submit quarterly progress report to the City with the final invoice.

2.13 **Reduction in Funding.** City reserves the right to reduce the amount of Funds disbursed to Grantee upon determination by City Staff that Grantee has failed to comply with any material term or condition of this Agreement.

2.14 **Duty to Provide Funding.** Grantee agrees to obtain, incur and document, all expenses, costs, and any other liabilities necessary to conduct the Arts Calendar and to pay when due, all such expenses, costs and liabilities. The City’s obligation to provide Funds pursuant to this Agreement is contingent upon Grantee’s timely payment of creditors.

2.15 **Termination.** This Agreement may be terminated at any time by written notice from either party, with or without cause. In such event, all finished and unfinished documents, data, deliverables, reports and work product, at the option of the City, become its property and shall be delivered to it or to any party it may designate. In the event of such termination, Grantee shall be paid for all satisfactory work, unless such termination is made for cause, in which event compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.

2.16 **Reporting Requirements.** Within sixty (60) days following the Arts Calendar going live, Grantee agrees to submit a detailed final report, including all Allowable Costs incurred and/or paid by Grantee in conjunction with the Arts Calendar, as well as all revenues related to the Arts Calendar. Grantee’s final report shall include narrative information detailing publicity and any other details it deems necessary. Grantee may be asked to provide periodic progress reports, in a form acceptable to the City, to the Reno Arts and Culture Commission or City Staff providing sufficient detail to determine the progress and financial status of the Arts Calendar.

2.17 **Record Inspection and Retention.** The City or its representative shall have the right to inspect and copy the records of Grantee upon reasonable notice. In addition, if any audit has been performed or is commenced during the term of this Agreement, a copy of such audit shall be provided to the City. Grantee agrees to keep its books in accordance with an approved bookkeeping system, to retain its books and records, including all records relating to the Arts Calendar, for a period of three (3) years following completion of the Arts Calendar, and to make such books and records available for inspection by City Staff, or other designated representative of the City, at any time from the effective date of this Agreement until expiration of the required retention period.

2.18 **Funding Out.** Notwithstanding any other provision of this Agreement, in the event that the City has failed to appropriate or budget funds for the purposes specified in this agreement, or that the City has been required, in its sole judgment, to amend previous appropriations or budgeted amounts to eliminate or reduce funding for the purposes in this Agreement, the City's obligation to fund any unpaid amounts shall be modified or eliminated in accordance with the City's appropriations or budget decision and the Agreement shall deemed so modified or terminated without penalty, charge or sanction.

Article 3

Use of Funds

3.3 **Allowable Costs.** Unless specified in writing by City Staff, costs incurred by Grantee in the conduct of the Arts Calendar for which Grantee may receive Funds, are generally limited to the following:

- 3.3.1 Administrative. Payments for contractors and/or employee salaries, and benefits for executive and supervisory administrative staff, program directors, support staff and equipment to support administrative functions.
- 3.3.2 Artistic. Payments for contractors and/or employee salaries and benefits for artistic directors, conductors, curators, composers, choreographers, designers, visual, performing and literary artists.
- 3.3.3 Technical/Production. Payments for contractors and/or employee salaries and benefits specifically identified with and applicable to the web based arts calendar for technical management, such as – web site design and mailings to secure information for calendar listings.

3.4 **Restrictions on Use.** Funds may not be utilized for payment of any of the following:

- 3.4.1 Capital Expenditures. The cost of permanent equipment, construction and improvements which increase the value or useful life of contractor's buildings or equipment, nor for the acquisition of the contractor's building or land, or any interest therein.

- 3.4.2 Fines and Penalties. Costs resulting from contractor's violations of, or failure of the organization or individual to comply with federal, state, and local laws, and regulations.
- 3.4.3 Interest. Interest of any kind paid on loans, notes, borrowed funds, or for any other reason, however presented.
- 3.4.4 Reserve Funds. Contributions to a reserve fund for any similar provisions.
- 3.4.5 Scholarships and Awards. Payment or contribution to any form of Scholarship or Award, or funding of educational expenses.
- 3.4.6 Lobbying. Costs of publicity or production of materials intended to support, defeat or otherwise influence legislation or any kind by federal, state, or local government.
- 3.4.7 Other. Attorney's fees, litigation costs, debt collection costs, political contributions, donations and losses.

Article 4 **Scope of Work**

- 4.1 **Scope of Work.** Grantee's Scope of Work shall consist of the following items:
 - J. Maintain a comprehensive web-based arts calendar for Northwestern Nevada for local and regional coverage of the arts;
 - K. Provide a contact point for arts calendar information through phone, office, mail and the Web site; and media contacts via personal, phone, mail or electronic means of communications;
 - L. Hold meetings as necessary with participating groups and individuals to identify listings in the arts calendar and coordinate scheduling, technical needs, publicity and other matters as required;
 - M. Identify technical and logistic needs and coordinate provision of services with City staff and other entities as appropriate;
 - N. Act as spokesperson for the arts calendar in the Truckee Meadows region;
 - O. Liaison with City Staff, the Reno Arts and Culture Commission or any parties designated by City as necessary for the successful implementation of contract provisions;
 - P. Provide grant writing and other fund raising services as required to successfully implement the arts calendar and the publicity plan; and,

- Q. Such other services as may become necessary for the successful implementation of the arts calendar.

4.3 **Deliverables.** Grantee's deliverables shall consist of the following:

- F. A database of arts programs and events that provides information on venues, schedules, types of events, the groups or individuals involved and contact information;
- G. A sponsorship agreement, no later than January 11, 2010, outlining recognition and acknowledgment of the City of Reno as one of the arts calendar's sponsors; and,
- H. Any other deliverables as mutually agreed to by both parties that may become necessary for the successful implementation of this Agreement.

Article 5 Additional Terms

5.17 **Indemnification of the City of Reno.** Neither the City, City Staff, City Council nor City Commission shall be responsible or liable for any debt, action, obligation, negligence or liability committed or incurred by the Grantee, its staff, agents or clientele, and Grantee hereby agrees to indemnify, defend and hold harmless the City, City Staff, City Council City Commission, and each of them, their officers, employees, agents and volunteers, from and against any and all claims, liabilities, and damages of any kind, including reasonable attorney's fees and costs arising from or relating to any breach of any of the terms and conditions of this Agreement. No payment, final or otherwise, shall operate to release the Grantee from any legal obligation under this provision.

5.18 **Legal Actions against Grantee.** If any legal action of any nature is filed against the Grantee, Grantee shall notify City Staff within three (3) days of receipt of complaint.

5.19 **Authority to enter into this Grant Agreement.** Grantee hereby represents and warrants that the undersigned person signing as an officer on behalf of Grantee has authority to enter into this Agreement on behalf of Grantee and to bind the same to this Agreement, and further, that there are no restrictions or prohibitions contained in any article of incorporation or bylaws of Grantee against entering into this Agreement.

5.20 **Assignment of this Agreement.** This Agreement is not assignable.

5.21 **No Joint Enterprise or Other Entity.** It is understood and agreed that no employee of the Grantee nor any other person or company hired by Grantee in connection with the arts calendar or otherwise shall, under any circumstance, be deemed an agent, contractor, employee or member of the City nor the Reno Arts and Culture Commission with the exception of a City Councilperson or City Official acting in his or her capacity as a member of Sierra Arts Board of Directors. This Agreement shall not be construed to create any form of agency,

partnership, joint venture, employer-employee relationship, principal-agent relationship, or other common entity or enterprise of any kind, between the parties.

5.22 Insurance. Grantee shall maintain for the term of this Agreement, and for a two year period of time after completion of this Agreement, comprehensive general liability insurance for limits of not less than one million dollars (\$1,000,000) for bodily injury and property damages, per occurrence. As evidence of liability insurance coverage, the City will accept certification of insurance issued by an authorized representative of the insurance carrier. Each certificate shall contain a 30-day written notice of cancellation to the certificate holder and shall name the City as an additional insured. Grantee shall maintain during the term of this Agreement Workers Compensation insurance covering the statutory liability as determined by the compensation laws of the State of Nevada. Grantee must also comply with all applicable state laws which require participation in any state workers compensation fund.

5.23 Independent Contractor. The parties agree that Grantee is an independent contractor and this Agreement is entered into in conformance with the provisions of NRS 284.173. Therefore, there shall be no:

- 5.23.1 Withholding of income taxes by the City;
- 5.23.2 Industrial insurance provided by the City;
- 5.23.3 Participation in group insurance plans which may be available to employees of the City;
- 5.23.4 Participation or contributions by either the independent contractor or City to any public employees retirement system;
- 5.23.5 Accumulation of vacation leave or sick leave;
- 5.23.6 Unemployment compensation coverage provided by City if the requirements of NRS 612.085 for independent contractors are met.

5.24 Limited Liability. The City does not waive and intends to assert any statutory privileges available to it under Nevada law. Contract liability of both parties shall not be subject to punitive damages. Actual damages for any City breach shall never exceed the amount of funds which have been appropriated for payment under this Agreement, but not yet paid, for the fiscal year budget in existence at the time of the breach.

5.25 Compliance with Applicable Law. Grantee shall comply with all applicable federal, state and local laws and regulations, including but not limited to business licensing requirements, workers' compensation and wage and hour laws.

5.26 Interpretation and Severability. This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement shall be interpreted in accordance with the laws of the State of Nevada. If any provision of this Agreement or its application is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall not be affected.

5.27 **Modification.** This Agreement is the entire Agreement between the parties. This Agreement shall not be modified or amended nor shall any rights hereunder be waived, except by written instrument signed by both parties, and authorized by the City Council.

5.28 **Benefits.** This Agreement is entered into solely for the benefit of the parties hereto. It shall confer no benefits, direct or indirect, on any third persons, including employees of the parties. No person or entity other than the parties themselves may rely upon or enforce any provision of this Agreement. The decision to assert or waive any provision of this Agreement is solely that of each party.

5.29 **Grantee Principal in Charge.** Grantee's Executive Director, or designee shall be responsible for the performance of the Scope of Work described herein. It is understood that Grantee shall coordinate its performance with the City's Contract Administrator which shall be the Arts and Culture Manager, or designee.

5.30 **Non-Discrimination Policy.** Grantee shall not discriminate in its employment practices against any person by reason of race, religion, color, sex, age or national origin and agree to comply with the provisions of said laws and orders as well as all laws and orders relating to the employment of the handicapped, the employment of veterans and the use of minority business enterprises to the extent any such laws and orders are applicable in the performance of work or furnishing of services, materials or supplies hereunder. For this purpose, the provisions of such laws and orders and pertinent regulations, as now in force or hereafter amended, shall be deemed an integral part of this Agreement to the same extent as if written at length.

5.31 **Jurisdiction.** This Agreement shall be administered and interpreted under the laws of the State of Nevada. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in full force and effect.

5.32 **Notices.** All notices, requests, demands and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given by registered or certified mail, return receipt requested, postage prepaid thereon as follows:

CITY
City of Reno Parks, Recreation
And Community Services
Attn: Arts and Culture Manager
P. O. Box 1900
Reno, Nevada 89505

GRANTEE
Sierra Arts Foundation
Attn: Executive Director
17 South Virginia Street, Suite 120
Reno, Nevada 89501

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date entered on the first page hereof.

CITY OF RENO

GRANTEE

By: _____
Robert A. Cashell, Sr.
Mayor

By: _____
Title: _____

ATTEST

Lynnette Jones
City Clerk

APPROVED AS TO FORM:

By: _____
Office of the City Attorney

Exhibit A
Financial Status Report

Billing Period: {02/01/10 – 02/28/10}

Report Date: {02/04/10}

A. Total Contract Amount (NTE)	\$10,000
B. Total Invoices Paid to Date	\$5,000
• Invoice No. 200234525 dated 10-03-10 for \$10,000	
C. Current Invoice for 02/10/10	\$1,000
D. Balance Remaining [A-(B+C)] as of 02/10/10	\$4,000

STAFF REPORT

To: Mayor and City Council

Agenda Item: H.4

Date: **2-24-2010**

Thru: Donna Dreska, City Manager

H.4

Subject : Staff Report: Resolution No. Resolution granting approval of \$63,700 to the Pioneer Center for Performing Arts for FY2010 Sponsorship (PRCS Special Revenue Fund and Room Tax Fund).

This item was continued from the December 16, 2009 and January 27, 2010 City Council meeting.

H.4.1 Approval of an Agreement with Pioneer Center for Performing Arts for FY2010.

From: Christine A. Fey, Arts and Culture Manager

Summary: The Reno Arts and Culture Commission recommends Council adoption of a Resolution granting approval of \$63,700, and approval of an Agreement with the Pioneer Center for Performing Arts for FY 2010 sponsorship.

Previous Council Action: On December 16, 2009, City Council tabled this item pending a budget meeting on January 8, 2010.

On January 27, 2010, City Council directed the Reno Arts and Culture Commission to review the sponsorship funding level for Pioneer Center and make a recommendation regarding the FY2009/10 sponsorship to Council.

Background: The Pioneer Center for the Performing Arts provides the primary performance venue for the Reno Philharmonic, Nevada Opera, various Ballet Companies, MasterWorks Choral and numerous other performances. Through programs like the Broadway Series and the City's Sponsorship, non-profit organization's rental rates are subsidized, enabling those organizations to meet their ever increasing financial obligations. This becomes increasingly difficult during an economic downturn. However, if the Pioneer Center is able to raise operational funds for utilities, maintenance and other facility needs they will be able to continue to offer a non-profit rate to local arts organizations.

The Pioneer Center draws approximately 100,000 patrons annually to Downtown Reno, which helps support the local economy. The City's sponsorship enables the Pioneer Center to keep costs down for Arts and Culture Organizations in Reno. The Pioneer Center plans to use the \$63,700 for maintenance, facility upgrades, utilities, including installing an HVAC digital control panel defray future utility costs, and services like the youth outreach programs and technical management of facility. A report from the Pioneer Center's Executive Director is attached following the Agreement.

Historically the Pioneer Center Agreement has been taken to Council for consideration at mid-year to allow the organization time to provide a scope of work for the fiscal year.

Discussion: At a special meeting of the Reno Arts and Culture Commission on February 5, 2010 the Commission reviewed the sponsorship, including the 5% reduction proposed by staff to balance the FY2009/10 budget. After discussion the Commission decided to recommend full funding for the sponsorship and agreed to take the proposed \$3,185 cut from the unspent portion of the Commission's budget in the Room Tax Fund.

Financial Implications: In the past three years the Pioneer Center Sponsorship increased from \$60,000 to \$70,000 which is included in the Parks, Recreation and Community Services Special Revenue Fund adopted budget for FY09/10. In FY2009/10, the Pioneer Center Sponsorship was reduced to \$63,700 (representing a 9% reduction) due to economic constraints and was kept at the same in the approved FY2010 budget due to ongoing economic conditions.

As the economic downturn has not improved, staff was recently directed to provide a list of possible budget reductions for Council's consideration. Staff identified a possible reduction of an additional 5% to the Pioneer Center Sponsorship in the amount of \$3,185. At Council's request, the Commission reviewed the funding level and scope of work for Pioneer Center and decided to recommend full funding for Pioneer Center by taking the \$3,185 budget cut from the unspent portion of the Commission's budget in the Room Tax Fund.

Due to the City's financial condition over the past year and subject to Council's approval, the following reductions have occurred with other arts and culture organizations.

- In FY09-10, Artown was reduced to \$120,000 (which represented a 4% reduction from FY08-09) and;
- In FY09-10, Sierra Arts has reduced its expenditure to \$10,000 (which represented a 50% reduction from FY08-09) and;
- In FY09-10, Arts and Culture Grants have been reduced by 12.6% through an initial cut of \$10,000 to the Challenge Grant Fund and unanticipated savings have been realized through \$21,500 in unclaimed grants. In years past, the returned grant funding would have been recommended for reallocation by the Arts and Culture Commission, however, staff is recommending the savings be used to apply towards the budget deficit, subject to Council direction. The Arts and Culture Commission supports this action.

Legal Implications: NRS 268.028(2) states the governing body of a city or its authorized representative may make grants by resolution to nonprofit organizations created for religious, charitable or educational purposes, to be used for any purpose which will provide a substantial benefit to the inhabitants of the city. The City Attorney's staff has added a "Funding Out" paragraph 2.8 to provide additional financial flexibility.

Advisory Commission Vote: Seven in favor; one abstain; none opposed; one vacant.

Recommendation: The Reno Arts and Culture Commission recommends Council adoption of the Resolution with the Pioneer Center for Performing Arts Sponsorship of \$63,700 for FY2010, including approval of the attached Agreement and authorization for the Mayor to sign;

Proposed Motion: I move to adopt Resolution No._____ and approve the Agreement in the amount of \$63,700, and authorize the Mayor to sign.

RESOLUTION NO. _____

**RESOLUTION GRANTING APPROVAL OF \$63,700 TO THE PIONEER CENTER
FOR PERFORMING ARTS FOR FY2010 SPONSORSHIP.**

WHEREAS, the City of Reno may grant funds to a nonprofit organization created for religious, charitable or educational purposes pursuant to NRS. 268.028 when such expenditure provides a substantial benefit to the inhabitants of the City; and

WHEREAS, Pioneer Center for the Performing Arts is a qualifying Nevada domestic non-profit corporation created for religious, charitable or educational purposes which has requested funds to offset expenses for facility maintenance and performances at the Pioneer Center, thereby assisting the advancement of arts and culture in the City, and

WHEREAS, the City of Reno finds the grant to the Pioneer Center for the Performing Arts will help further the advancement of arts and culture in the City and thereby provide a substantial benefit to the inhabitants of the City; and

WHEREAS, the grant is subject to conditions contained in a contract in the form attached hereto as Exhibit A;

NOW, THEREFORE, BE IT RESOLVED that the City of Reno approves the grant of SIXTY-THREE THOUSAND SEVEN HUNDRED DOLLARS AND NO CENTS (\$63,700.00) to the Pioneer Center for the Performing Arts to be used as designated in and subject to the conditions set forth in the attached grant contract; and,

BE IT FURTHER RESOLVED, that should this grant or any portion thereof not be used as set forth in this Resolution, any unused funds shall be returned to the City of Reno.

Upon motion by Council member _____, seconded by City Council Member _____, the foregoing Resolution was passed and adopted this _____ day of _____, 2010, by the following vote:

AYES: _____

NAYS: _____

ABSENT: _____ ABSTAIN: _____

Approved this _____ day of February, 2010.

Robert A. Cashell, Sr., Mayor

ATTEST:

Lynnette Jones, City Clerk

AGREEMENT FOR PIONEER CENTER FY 2010 SPONSORSHIP

This agreement ("Agreement") is entered into at Reno, Nevada, this ____ day of February, 2010, by and between the **City of Reno**, a municipal corporation (the "City"), and **Pioneer Center for the Performing Arts** ("Contractor").

RECITALS

This Agreement is entered into based upon the following:

L. The City supports Arts and Culture organizations in Reno through grants and sponsorships.

M. The City desires to assist the Pioneer Center for Performing Arts to provide a quality facility as a performance venue.

N. Contractor is uniquely qualified to provide said services through the management and operations of the Pioneer Center for the Performing Arts.

O. Contractor represents that it is duly qualified and able to render the services as described herein.

P. Based upon the recommendation of the Parks, Recreation and Community Services Department, the City has approved distribution of up to a specified sum of funds to Contractor pursuant to the terms and conditions of this Agreement provided that Contractor complies with all terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into the Agreement by this reference, the parties mutually agree as follows:

Article 1 Definitions and Attachments

1.11 **"Allowable Costs"** shall mean all costs properly incurred by the Contractor in accordance with Article 3 of this Agreement.

1.12 **"City Staff"** shall mean the person identified as the City's contract administrator in Section 5.13 of this Agreement.

1.13 **"Facility"** shall mean the Pioneer Center for the Performing Arts.

1.14 **"Funds"** shall mean those funds disbursed to Contractor pursuant to the terms and conditions set forth in this Agreement.

1.15 **"Executive Director"** shall mean the person identified by Contractor in Section 5.13 of this Agreement as it's primarily point of contact for purposes of contract administration.

Article 2

Funding

2.19 **Funding Amount.** In exchange for Contractor's performance of this Agreement, and the Scope of Work set forth in Article 4, City agrees to disburse Funds to Contractor in a total amount of SIXTY-THREE THOUSAND SEVEN HUNDRED DOLLARS AND NO CENTS (\$63,700,00). In no event shall City be obligated to reimburse Contractor for any costs in excess of \$63,700.00, whether or not those excess costs were incurred pursuant to this Agreement at the direction of City Staff.

2.20 **Invoices.** Contractor shall submit invoices to City no more frequently than monthly. As a condition precedent to any payment made to Contractor under this agreement, Contractor shall submit quarterly to the City an updated "Financial Status Report", an example of which is set forth in Agreement A. Contractor shall receive payments from the City based upon approved invoices within thirty (30) days of invoice postmark date.

2.21 **Reduction in Funding.** City reserves the right to reduce the amount of Funds disbursed to Contractor upon determination by City Staff that Contractor has failed to comply with any material term or condition of this Agreement.

2.22 **Duty to Provide Funding.** Contractor agrees to obtain, incur and document, all expenses, costs, and any other liabilities necessary to operate the facility and to pay when due, all such expenses, costs and liabilities. The City's obligation to provide Funds pursuant to this Agreement is contingent upon Contractor's timely payment of creditors.

2.23 **Termination.** This Agreement may be terminated at any time by written notice from either party, with or without cause. In such event, all finished and unfinished documents, data, deliverables, reports and work product, at the option of the City, become its property and shall be delivered to it or to any party it may designate. In the event of such termination, Contractor shall be paid for all satisfactory work, unless such termination is made for cause, in which event compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.

2.24 **Reporting Requirements.** Within sixty (60) days following the end of the fiscal year, Contractor agrees to submit a detailed final report, including all Allowable Costs incurred and/or paid by Contractor in conjunction with the facility, as well as all revenues related to the facility. Contractor's final report shall include narrative information detailing attendance, publicity and any other details it deems necessary. Contractor may be asked to provide periodic progress reports, in a form acceptable to the City providing sufficient detail to determine the progress and financial status of the facility.

2.25 **Record Inspection and Retention.** The City or its representative shall have the right to inspect and copy the records of Contractor upon reasonable notice. In addition, if any audit has been performed or is commenced during the term of this Agreement, a copy of such audit shall be provided to the City. Contractor agrees to keep its books in accordance with an approved bookkeeping system, to retain its books and records, including all records relating to the facility, for a period of three (3) years following completion of the facility, and to make such

books and records available for inspection by City Staff, or other designated representative of the City, at any time from the effective date of this Agreement until expiration of the required retention period.

2.8 **Funding Out.** Notwithstanding any other provision of this Agreement, in the event that the City has failed to appropriate or budget funds for the purposes specified in this agreement, or that the City has been required, in its sole judgment, to amend previous appropriations or budgeted amounts to eliminate or reduce funding for the purposes in this Agreement, the City's obligation to fund any unpaid amounts shall be modified or eliminated in accordance with the City's appropriations or budget decision and the Agreement shall be deemed so modified or terminated without penalty, charge or sanction.

Article 3 **Use of Management Funds**

3.5 **Allowable Costs.** Unless specified in writing by City Staff, costs incurred by Contractor in the conduct of the facility for which Contractor may receive Management Funds, are limited to the following:

- 3.5.1 Administrative. Payments for contractors and/or employee salaries, and benefits for executive and supervisory administrative staff, program directors, support staff and equipment to support administrative functions.
- 3.5.2 Artistic. Payments for employee salaries and benefits for artistic directors, conductors, curators, composers, choreographers, designers, visual, performing and literary artists.
- 3.5.3 Technical/Production. Payments for contractors and/or employee salaries and benefits specifically identified with and applicable to the festival, for technical management, such as – technical directors, wardrobe, lighting, and sound crew, stage crews, video and film technicians, exhibit preparers and equipment to support technical/production functions.
- 3.5.4 Outside Artistic Fees and Services. Payments to firms or persons for the services of individuals who are not considered employees for the applicant, including artistic directors, conductors, curators, composers, choreographers, designers, visual, performing and literary artist's service in non-employee/non-staff capacities.
- 3.5.5 Capital Expenditures. The cost of permanent equipment, construction and improvements which increase the value or useful life of contractor's buildings or equipment.
- 3.5.6 Marketing. Costs for marketing, advertising, publicity or promotion, including printing and postage.

3.6 **Restrictions on Use.** Management Funds may not be utilized for payment of any of the following:

- 3.6.1 Fines and Penalties. Costs resulting from contractor's violations of, or failure of the organization or individual to comply with federal, state, and local laws, and regulations.
- 3.6.2 Interest. Interest of any kind paid on loans, notes, borrowed funds, or for any other reason, however presented.
- 3.6.3 Reserve Funds. Contributions to a reserve fund for any similar provisions.
- 3.6.4 Scholarships and Awards. Payment or contribution to any form of Scholarship or Award, or funding of educational expenses or costs for students, except as a part of a facility program or event in the form of free or reduced admission or participation fees.
- 3.6.5 Lobbying. Costs of publicity or production of materials intended to support, defeat or otherwise influence legislation or any kind by federal, state, or local government.
- 3.6.6 Other. Attorney's fees, litigation costs, debt collection costs, political contributions, donations and losses.

Article 4 Scope of Work

4.1 **Scope of Work.** Contractor's Scope of Work shall consist of the following items:

- R. Ongoing theater upgrades including concrete work, energy upgrades or facility maintenance to enhance customer comfort and safety.
- S. Utility subsidy to help defer increases of gas and electrical costs in addition to improving energy efficiency.
- T. Daily operations including goods and services related to building usage.

4.4 **Deliverables.** Contractor's deliverables shall consist of the following:

- I. A well managed and maintained facility.
- J. Quarterly progress reports.
- K. Recognition of City sponsorships in promotional materials.

Article 5

Additional Terms

5.33 Indemnification of the City of Reno. Neither the City nor City Staff shall be responsible or liable for any debt, action, obligation, negligence or liability committed or incurred by the Contractor, its staff, agents or clientele, and Contractor hereby agrees to indemnify, defend and hold harmless the City or Staff and each of them, their officers, employees, agents and volunteers, from and against any and all claims, liabilities, and damages of any kind, including reasonable attorney's fees and costs arising from or relating to any breach of any of the terms and conditions of this Agreement. No payment, final or otherwise, shall operate to release the Contractor from any legal obligation under this provision.

5.34 Legal Actions against Contractor. If any legal action of any nature is filed against the Contractor, Contractor shall notify City Staff within three (3) days of receipt of complaint.

5.35 Authority to enter into this Contract. Contractor hereby represents and warrants that the undersigned person signing as an officer on behalf of Contractor has authority to enter into this Agreement on behalf of Contractor and to bind the same to this Agreement, and further, that there are no restrictions or prohibitions contained in any article of incorporation or bylaws of Contractor against entering into this Agreement.

5.36 Assignment of this Contract. This Agreement is not assignable.

5.37 No Joint Enterprise or Other Entity. It is understood and agreed that no employee of the Contractor nor any other person or company hired by Contractor in connection with the facility or otherwise shall, under any circumstance, be deemed an agent, contractor, employee or member of the City nor Reno Arts and Culture Commission with the exception of a City Councilperson acting in his or her capacity as a member of the Pioneer Center Board of Directors. This Agreement shall not be construed to create any form of agency, partnership, joint venture, employer-employee relationship, principal-agent relationship, or other common entity or enterprise of any kind, between the parties.

5.38 Insurance. Contractor shall maintain for the term of this Agreement, and for a two year period of time after completion of this Agreement, comprehensive general liability insurance for limits of not less than one million dollars (\$1,000,000) for bodily injury and property damages, per occurrence. As evidence of liability insurance coverage, the City will accept certification of insurance issued by an authorized representative of the insurance carrier. Each certificate shall contain a 30-day written notice of cancellation to the certificate holder and shall name the City as an additional insured. Contractor shall maintain during the term of this Agreement Worker's Compensation insurance covering the statutory liability as determined by the compensation laws of the State of Nevada. Contractor must also comply with all applicable state laws which require participation in any state workers compensation fund.

5.39 Independent Contractor. The parties agree that Contractor is an independent contractor and this Agreement is entered into in conformance with the provisions of NRS 284.173. Therefore, there shall be no:

- 5.39.1 Withholding of income taxes by the City;
- 5.39.2 Industrial insurance provided by the City;
- 5.39.3 Participation in group insurance plans which may be available to employees of the City;
- 5.39.4 Participation or contributions by either the independent contractor or City to any public employees retirement system;
- 5.39.5 Accumulation of vacation leave or sick leave;
- 5.39.6 Unemployment compensation coverage provided by City if the requirements of NRS 612.085 for independent contractors are met.

5.40 Limited Liability. The City does not waive and intends to assert any statutory privileges available to it under Nevada law. Contract liability of both parties shall not be subject to punitive damages. Actual damages for any City breach shall never exceed the amount of funds which have been appropriated for payment under this Agreement, but not yet paid, for the fiscal year budget in existence at the time of the breach.

5.41 Compliance with Applicable Law. Contractor shall comply with all applicable federal, state and local laws and regulations, including but not limited to business licensing requirements, workers' compensation and wage and hour laws.

5.42 Interpretation and Severability. This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement shall be interpreted in accordance with the laws of the State of Nevada. If any provision of this Agreement or its application is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall not be affected.

5.43 Modification. This Agreement is the entire Agreement between the parties. This Agreement shall not be modified or amended nor shall any rights hereunder be waived, except by written instrument signed by both parties, and authorized by the City Council.

5.44 Benefits. This Agreement is entered into solely for the benefit of the parties hereto. It shall confer no benefits, direct or indirect, on any third persons, including employees of the parties. No person or entity other than the parties themselves may rely upon or enforce any provision of this Agreement. The decision to assert or waive any provision of this Agreement is solely that of each party.

5.45 Contractor Principal in Charge. Contractor's Executive Director or designee shall be responsible for the performance of the Scope of Work described herein. It is understood that Contractor shall coordinate its performance with the City's Arts & Culture Manager or designee.

5.46 **Non-Discrimination Policy.** Contractor shall not discriminate in its employment practices against any person by reason of race, religion, color, sex, age or national origin and agree to comply with the provisions of said laws and orders as well as all laws and orders relating to the employment of the handicapped, the employment of veterans and the use of minority business enterprises to the extent any such laws and orders are applicable in the performance of work or furnishing of services, materials or supplies hereunder. For this purpose, the provisions of such laws and orders and pertinent regulations, as now in force or hereafter amended, shall be deemed an integral part of this Agreement to the same extent as if written at length.

5.47 **Jurisdiction.** This Agreement shall be administered and interpreted under the laws of the State of Nevada. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in full force and effect.

5.48 **Notices.** All notices, requests, demands and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given by registered or certified mail, return receipt requested, postage prepaid thereon as follows:

CITY

City of Reno Parks, Recreation
and Community Services
Arts and Culture Manager, Christine Fey
925 Riverside Drive
Reno, Nevada 89503

CONTRACTOR

Pioneer Center for the Performing Arts
Attn: Executive Director, Willis Allen
100 South Virginia Street
Reno, NV 89501

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date entered on the first page hereof./

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CITY OF RENO

CONTRACTOR

By: _____

Robert A. Cashell, Sr.
Mayor

By: _____

Title: _____

ATTEST

Lynnette Jones
City Clerk

APPROVED AS TO FORM:

By: _____

Office of the City Attorney

Agreement A
Financial Status Report

Billing Period: {02/01/10 – 02/28/10}

Report Date: {03/04/10}

A. Total Contract Amount (NTE)	\$63,700
B. Total Invoices Paid to Date	\$10,000
• Invoice No. 200234525 dated 1-03-10 for \$10,000	
C. Total Past Invoices Unpaid	\$0
• None	
D. Current Invoice for 02/01/10 – 02/28/10	\$10,000
E. Balance Remaining [A-(B+C+D)] as of 03/04/10	\$53,700
F. Estimated Invoice for 03/01/10 – 03/31/10	\$20,000
{Description of work items/rationale of estimate}	
G. Projected Balance Remaining [E-F] as of 04/01/10	\$33,700

Pioneer Center Update January 2010

Re: City of Reno Arts and Culture Grants
Pioneer Center usage update

The 2008-2009 City Of Reno grant in the amount of \$63,700 was instrumental in helping the Pioneer Center keep the building mechanical maintenance (elevators, HVAC, fire protection and monitoring, ground water pumping) current along with the many daily needs of a 40 year old, 65,000 sq. ft. facility. The Pioneer Center also performed upgrades to the Underground Theater, occupied by Majical Productions and the Hyp Hypnotist, which brings weekly performances and attendees downtown.

2008-2009 Pioneer Usage and Community support:

- 101 performances.
- 170 days of usage (performances, rehearsals, load ins and load outs).
- 99,700 attendees.
- \$2,998,000.00 in ticket sales.
- \$86,000.00 in direct support to non-profit users (most non-profit users do not pay enough rent or generate enough cash flow to cover the actual costs of their building usage)
- \$350,000.00 + in contract and union labor and rental goods relating to performances.
- \$135,000.00 + in advertising expenditures.
- Room, food and beverage expenditures by traveling Broadway productions (tens of thousands of dollars spent on hotel rooms, in food and beverage at local hotels, restaurants and casinos).
- Payment to technical crews working the events.
- Room, food and beverage expenditures by attendees.

The 2009-2010 Sponsorship Grant will be used for further the upkeep and maintenance of the Pioneer Center along with “green” conservation upgrades to lighting, electrical and HVAC systems. We will be installing a 20kw solar array, new digital lighting control to our existing HVAC control system along with internet monitoring to help keep utility usage down.

The Pioneer Center has seven full time staff to facilitate booking, performances, settlements, accounting, concessions, youth programs outreach, grant writing, daily cleaning and upkeep, box office sales, operations management, technical management of shows, office systems management, grounds upkeep, among many other tasks necessary to facilitate our enormous facility usage. This is a dedicated and hard working group of individuals giving the necessary extra hours and effort to make the Pioneer Center a wonderful place to stage or attend an event.

The Pioneer Center also facilitates a volunteer group of 200+ to help with ticket taking, seating and crowd management.

Respectfully,

Willis Allen

Pioneer Center for the Performing Arts

STAFF REPORT

To: Mayor and City Council

Agenda Item: J.2

Date: 2-24-2010

Thru: Donna Dreska, City Manager

J.2

Subject : Staff Report: Discussion and potential direction to staff regarding Proposals to Conduct a City-Wide Organizational Study.

From: Trudy Cross, Internal Auditor

Summary: At the direction of the City Council staff issued a Request for Proposal (RFP) for a consultant to conduct a City-wide Organizational and Operational Assessment. Proposals were received from eight firms, with three firms deemed qualified to conduct the study; all with costs in the low \$200,000's. Discussions with Finance indicate that due to budgetary constraints, no funds are available to pay for the project. Staff seeks Council direction whether or not to proceed with oral interviews for the finalists and identify a source of funding to pay for the project.

Previous Council Action: October 2009 - Council requests an RFP be issued to conduct a City-Wide Organizational Study.

Background: The RFP was issued October 28, 2009 to a wide range of local government consulting agencies, including many who had previously conducted department-wide audits as part of the Internal Audit program. The RFP was purposely divided into two phases, (Phase 1 was to assess the City's current organizational structure and efficient allocation of staff, while Phase 2 was to look more deeply at where services could be more cost effectively provided through consolidation, outsourcing, technological improvements, etc.). A total of eight proposals were received in December 2009. An evaluation team of department managers and the City's Internal Auditor reviewed the proposals and concluded that the three low bidders did not meet the minimum qualifications for the study, and the two high bidders had priced themselves out of consideration. The remaining three firms: CityGate Associates (Community Development audit), Management Partners (City Attorney audit), and Matrix Consulting (HR and Civil Service audit and Fire audit) have all worked for the City in the past as indicated and all proposed costs in the low \$200,000's.

Discussion: At this point the three finalists are close enough in their proposals that staff does not recommend awarding a contract without some type of oral interview and reference check. Since there is a cost to the consultants to come to Reno for oral interviews, staff does not advise bringing in the finalists unless there is a secured source of funding to pay for the project.

Financial Implications: Funding needs to be identified and approved by Council in order to carry out the City-wide Organizational and Operational Assessment or a scaled back alternative project.

Legal Implications: NRS 354.626 makes it is unlawful to expend money in excess of amounts appropriated during any fiscal year. The statute states, in part, that “no governing body or member thereof, officer, office, department or agency may, during any fiscal year, expend or contract to expend any money or incur any liability, or enter into any contract which by its terms involves the expenditure of money, in excess of the amounts appropriated for that function...” There are noted exceptions within the statute; however, those exceptions are not applicable to the consulting agreement under consideration. Accordingly, a funding source would need to be identified prior to approval of the consulting agreement.

Recommendation: Staff seeks Council direction.

Proposed Motion: I move to:

A.) Proceed with the selection of a consultant to conduct a City-wide Organizational and Operational Assessment, and identification of a funding source.

OR

B.) Direct staff to not proceed with the project at this time.

STAFF REPORT

To: Mayor and City Council

Agenda Item: **J.3**

Date: **2-24-2010**

Thru: Donna Dreska, City Manager

J.3

Subject : Staff Report: Discussion, potential appointments and direction to staff regarding the creation of a Stakeholder Group to provide ideas regarding the budget, with potential expenses not to exceed \$25,000 (General Fund).

From: Christopher Good, Assistant to the City Manager

Summary: At Council direction staff solicited applications from community members to serve on a new Stakeholders Group to provide ideas for the City Council regarding the budget. Twenty-one applications have been received as of February 16, and applications continue to be accepted. Staff recommends Council direction on how to proceed.

Discussion: Staff proposes the mission for the Stakeholders Group to be: To allow Reno residents the opportunity to review public service needs and budget priorities for the 2011/12 fiscal year, and prioritize future public service delivery for the City of Reno.

In the short term the Stakeholders Group would review and comment on the 2010/11 Budget priorities for the final budget. The short term project would require biweekly meetings in March and April. The deadline for the short term project would be the April 14 City Council meeting when the group would report on their findings and comments.

Staff continues to have concerns regarding the short term project due to the limited time and staff available. Most of the staff requested to do this are also working with the bargaining groups and the budget. Staff recommends Council use existing boards, such as the Financial Advisory Board, for the 2010/11 budget.

In the long term the Stakeholders Group would:

1. Review and comment on the 2011/12 Budget priorities for inclusion in the final budget.
2. Recommend a long term (5-7 year) strategic prioritization of City programs and services to guide future downsizing if needed, and as revenues recover, prioritize the reintroduction of services.

The long term project would require meetings July through November, 2010. The deadline for the long term project would be the December 8, 2010 City Council meeting.

Staff time will be required to administer both the short term and long term projects. A professional facilitator would be useful to help guide discussions, ensure efficient deliberation, and access the information required for the group to make recommendations.

Financial Implications: A professional facilitator would cost less than \$25,000, within the City Manager's expenditure authority. The longer the project continues the higher the expenses would be. Funds are available in the City Manager's budget for this expense.

Recommendation: Staff seeks Council direction on the short term and long term projects described above and their due dates, and direction regarding hiring an outside facilitator.

Proposed Motion: I move to:

- A.) Move forward with the short term project using a new Stakeholders Group, and make appointments to serve on the group.
- B.) Move forward with the short term project using existing board(s).
- C.) Move forward with the 2011/2012 long term project, and make appointments to serve on the new Stakeholders Group.